

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION 2641 OF 2020

Smt. Muktabai Nathuram Gadekar through POA Sushil Nathuram Gadekar	...	Petitioner
<i>Versus</i>		
Smt. Nayana Shivaji Bhagat and Ors.	...	Respondents

Mr. Rakesh P. Saroj for the Petitioner.
None for the Respondents.

CORAM: ROHIT B. DEO, J.
DATE : 13th JULY, 2022

P.C. :-

1. At the oral request of the petitioner, respondent 10 is deleted.
2. The petitioner is the defendant 1 in Special Civil Suit 1513 of 2017 which is brought for declaration and injunction. It is *inter-alia* prayed that the succession certificate obtained by the defendant 1 in respect of the suit property is *void-ab-initio*.
3. Defendant 1 did not filed written statement within the stipulated period and on 15th February, 2018, the learned Trial Judge proceeded without written statement.
4. Defendant 1 preferred an application exhibit 49 seeking condonation of delay and permission to file on record the written statement, which is rejected by the learned Trial Judge vide order dated 12th December, 2019, which order is impugned.
5. I have heard the learned counsel for the defendant 1.

Respondents-plaintiffs have not appeared though duly served.

6. In essence, the case pleaded was that defendant 1 is a senior citizen then aged 75 years and substantial time was consumed in collecting the relevant documents and then engaging and instructing the advocate. It is further contended that defendant 1 had also preferred an application for rejection of the plaint and that application was decided on 17th November, 2018. Defendant 1 pleaded that the delay in filing the written statement be condoned and the written statement be accepted on record.

7. I have perused the record which reveals that the application for setting aside the order dated 15th February, 2018 was preferred by defendant 1 on 19th December, 2018. It does not appear that the suit has progressed in the interregnum. Several reasons are articulated in the application, which have not been considered in any detail. The learned Trial Judge has relied on the decision in ***Atcom Technologies Ltd. v/s. Y. A. Chunawala and Co., (2018) 6 SCC 639*** and observed that the defendant 1 has not made out the exceptional case which the Apex Court emphasized.

8. The expression “exceptional case” cannot be stretched to the extent the learned Trial Judge has done. In my considered view, while permission to file written statement beyond stipulated period cannot be granted routinely and a strong case will have to be demonstrated, the expression exceptional case cannot be understood as rare case.

9. Be that as it may, the averments in the petition have gone un rebutted. Sufficient cause is made out in the application for inability

of the defendant 1, who is senior citizen, to file written statement within time. The defendant 1 has also deposited amount of Rs.30,000/- (Rupees Thirty Thousand Only) in this Court as directed. The said amount shall be paid to the plaintiffs as cost.

10. Subject to the direction to pay cost, the order impugned is set aside. The written statement which is placed on record be admitted.

11. The petition is allowed in the aforestated terms.

[ROHIT B. DEO, J.]