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

WRIT PETITION 6911 OF 2019

Shri Shivaji Vithal Warule (deceased)
through heirs & legal representatives -
1A) Smt. Yamuna Shivaji Warule & Ors. ... Petitioners.

V/s.

Smt. Shaku Sudam Warule & Ors. ... Respondents.

Mr. Uday B. Nithot, Advocate for the Petitioners.

CORAM : ROHIT B.DEO, J.

DATE : JULY 22, 2022

PC :

1. In Regular Civil Suit 94 of 1997 which is brought by the respondent 2 for partition, declaration and injunction, the petitioners, who are arrayed as defendants 10A to 10C, were served with the suit summons on 16.12.1998.

2. The petitioners did not appear in the suit and were proceeded ex-parte. The present stage of the suit is that evidence is on going.

3. More than 19 years, after the Petitioners were proceeded ex-parte, they preferred an application dated 28.03.2018, seeking permission to place on record their written statement.

4. The petitioners pleaded that when summons was served, defendants 10D to 10F were minors, defendant 10B to 10C had no knowledge of the proceedings and defendant 10A is rustic and uneducated woman, who was saddled with the responsibility of looking after her five children. This broadly is the justification for approaching the learned trial Judge, 19 years after the passing of the ex-parte order.

5. The learned trial Judge was pleased to reject the application vide order dated 15.03.2019, on the premise that there is no justification pleaded much less demonstrated for approaching the court 19 years after the ex-parte order.

6. The learned trial Judge further noted that no application is preferred for setting aside the ex-parte order and the application merely seeks permission to place on record the written statement.

7. I see no error in the view taken by the learned trial Judge.

8. It is true that the matter pertains to pre-2002 amendment to the Code of Civil Procedure, 1908. However, delay of 19 years in approaching the court for grant of permission to file written statement cannot be condoned at the mere askance. The evidence has commenced. The averments in the application are grossly insufficient to

make out a case for grant of permission to place on record the written statement.

9. Petition is dismissed.

(ROHIT B. DEO, J.)

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