

H. H. Sawant.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14824 OF 2022

Vandana Mohan Gunjal

.. Petitioner

Versus

Mangalwadi Co-operative Housing Society
through Secretary

Sanjiv Shankar Humnabadkar & Anr.

.. Respondents

-
• Mr. S. C. Wakankar for Petitioner

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 06, 2022.

P.C.:

1. Heard Mr. Wakankar, learned Advocate for the Petitioner.
2. The order impugned in the present petition is dated 14.10.2022 passed by the Civil Judge Senior Division, Pune below Exhibit-55 in Regular Civil Suit No.1849 of 2015.
3. Petitioner (Defendant No.1 therein) had sought to set aside order dated 07.12.2019 passed against her directing “no written statement order” due to a delay of 1851 days as computed by the Petitioner. Admittedly the Petitioner herself self excluded the period of COVID-19 pandemic and sought condonation of the actual delay of 5 years and 3 months in her application.
4. Petitioner admitted service of summons on 19.11.2014 and thereafter she appeared on 20.11.2014 and also filed her reply at

Exhibit 14 to contest the application under Exhibit-5. Thereafter it is the Petitioner's case that she had instructed her Advocate to file her reply to the Exhibit-5 Application alongwith her written statement but her Advocate filed her reply to the Exhibit-5 application only and did not file the written statement. In this background on 07.12.2019, the “no written statement order” came to be passed against her. Petitioner approached the learned Trial Court seeking to set aside the said order on the ground that between the years 2012 and 2017, she was detected with cancer and underwent three surgeries and was undergoing treatment for her ailments. Thereafter since March-2020 the Petitioner has stated that due to the COVID-19 pandemic and the ensuing lock-down that was imposed, she was unable to take appropriate steps. Admittedly Defendant No.1 (Petitioner) had sold the suit property to Defendant No.2 on 20.06.2018. Admittedly the subsequent purchaser of the suit property has been allowed to be joined as Defendant No.2 to the suit plaint. The learned Trial Court while rejecting the application below Exhibit-55 has observed in paragraph No.7 that the reasons given by the Defendant No.1 (Petitioner herein) about her illness and husband's medical treatment lacked substance. That apart there is no other reason given for rejecting the application

5. Perusal of the Petitioner's application clearly reveals that the relevant medical papers were filed on record by the Petitioner in

respect of her ailment and same were specifically described in the grounds set out for seeking condonation of delay. Hence the finding returned by the learned Trial Court in one singular sentence that the reasons given by the Petitioner lacked substance is not tenable.

6. Admittedly there is a delay of 1821 days in on the part of the Petitioner. However, considering the orders passed by the Supreme Court in *Suo Motu Writ Petition* for exempting the period during COVID-19 lock-down, the delay in the present case would be approximately 5 years and 26 days.

7. Mr. Wakankar fairly submitted that there is no suppression whatsoever on the part of the Petitioner and that apart all that the Petitioner desires is to place on record the fact pertaining to suit property and hence filing of the “no written statement order” is detrimental and prejudicial to her rights. Hence setting aside the impugned order is necessitated and necessary to adjudicate the *lis* between the parties. He fairly submitted that the Petitioner may be put to costs for the delay.

8. In view of the grounds stated in the original application filed by the Petitioner, I am inclined to allow the Application by condoning the delay of 5 years and 26 days subject to the Petitioner paying costs of Rs.15,000/- to the Kirtikar Law Library, High Court. Subject to payment of costs the delay stands condoned and the impugned order dated 14.10.2022 stands quashed and set aside.

9. Writ Petition is allowed in terms of prayer clause (a) which reads thus:-

“a. Calling for records and proceedings of Judgment and Order dated 14/10/2022 passed by the Ld. Civil Judge Senior Division, Pune below Exh.55 in Regular Civil Suit No. 1849 of 2014 and after examining legality, validity and propriety thereof, Judgment and Order dated 14/10/2022 passed by the Ld. Civil Judge Senior Division, Pune below Exh.55 in Regular Civil Suit No. 1849 of 2014 be quashed and set aside and the application be allowed in toto.”

[MILIND N. JADHAV, J.]

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