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

**WRIT PETITION NO.11607 OF 2019
IN
SPECIAL CIVIL SUIT NO.192 OF 2014**

Mansukhlal Velji Senghani and Anr.Petitioners

V/s.

Radha Prabhu TelangRespondent

Mr. Kishore Jain, with Mr. Darshit Jain and Ms. Nisha A. Waghmare, i/
by Mrs. Divya D. Jain and Mrs. Priyal Chheda, for the Petitioners.
Mr. Dilip Bodake for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 22, 2022.

P.C.:-

1] Leave to amend so as to question the order passed below
Exhibits-18 and 28. Amendment be carried out forthwith.

2] After suit summons in a suit for declaration being Special Civil
Suit No.192 of 2014 was served on 4th April, 2015, matter was
adjourned for placing on record Written Statement.
Petitioners/Defendants have failed to place on record Written
Statement and as such, took out Application-Exhibit-18 for permission
to place on record Written Statement with a prayer for condonation of

delay and for setting aside 'No W.S.' order.

3] It appears that Application-Exhibit-28 for grant of aforesaid relief was taken out by the Petitioners/Defendants which was rejected on 2nd February, 2019.

Aforesaid rejection is based on the ground that Application-Exhibit-28 was moved after delay of about three years.

4] Subsequent thereto, prayer of the Petitioners for hearing of Exhibit-18 vide Application-Exhibit-30 was considered and vide order below Exhibit-30 dated 11th October, 2019 Application-Exhibit-30, so also Application-Exhibit-18 came to be rejected. As a consequence, prayer of the Petitioners/Defendants for permission to place on record Written Statement after condoning delay came to be rejected.

5] Submissions are, out of incorrect advise, Exhibit-18, Exhibit-28 and Exhibit-30 were moved for very same cause. It is claimed that procedural law which is taken recourse to repeatedly at the behest of

the Petitioners/Defendants may not be considered to the prejudice of the Petitioners/Defendants, as such procedural law is beyond the knowledge of the Petitioners/Defendants and the said mistake has occurred based on incorrect professional advise. Counsel for the Petitioners/Defendants as such suggested that Petitioners may be permitted to place on record Written Statement, subject to reasonable condition.

6] Prayer is objected by Mr. Bodake, learned Counsel for the Respondent/original Plaintiff. According to him, entire conduct of the Petitioners/Defendants is repeated attempts to delay the suit proceedings. It is claimed that till this date, Petitioners have not cooperated in disposal of the suit. That being so, he submitted that Court should not grant relief to the Petitioners/Defendants on the ground of equity and the Petition is liable to be dismissed.

7] I have appreciated rival submissions.

8] Once Exhibit-18 was pending before the Trial Court with the

relief of permitting the Petitioners to place on record Written Statement with the Application for condonation of delay, Court was duty bound to decide the same, as same was brought on record before Exhibits-28 and 30. Rather, Court has proceeded to decide Exhibit-28, thereby rejecting prayer of the Petitioners for condonation of delay on the ground that there was delay of about three years in moving for setting aside 'no W.S.' order and delay was not at all explained. Perhaps pendency of Application Exhibit-18 for very same relief was not brought to the notice of the Court.

9] Fact remains that once Application-Exhibit-18 with prayer for condonation of delay and acceptance of Written Statement was moved, limitation stops running from that point against the Petitioners and Trial Court was duty bound to decide the said Application. It is not in dispute that alongwith Exhibit-18, there was an application for condonation of delay and permission to place on record Written Statement.

10] In the aforesaid backdrop, it can be inferred that Court below

has committed an error in first deciding Application-Exhibit-28 wherein there was delay of about three years, ignoring Application-Exhibit-18 wherein there was delay of about 250 days. Be that as it may, considering the fact that delay was caused in preferring Application-Exhibit-18 for permission to place on record Written Statement, in my opinion, Petitioners/Defendants should be given a chance to place on record their Written Statement, subject to condition. After 'no W.S.' order was passed and Applications-Exhibits-18, 28 and 30 are decided, I am informed that trial in the suit is yet to commence, as issues are not framed. Petitioners have already submitted their Written Statement before the Court below.

11] As such, orders passed below Exhibits 18, 28, and 30 are hereby quashed and set aside, subject to deposit of costs of Rs 50,000/- by the Petitioners/Defendants before the court below within a period of four weeks from today. Court below may pass appropriate order of apportionment of costs.

12] Written Statement which is already tendered alongwith

Exhibit-18 as such be accepted as 'no W.S.' order is also quashed and set aside. Suit to proceed. Undertaking given by the Petitioners that they shall cooperate in expeditious disposal of the suit is accepted. Trial Court shall deal with unreasonable prayer for adjournment by putting such party to condition of payment of heavy costs.

13] Petition stands allowed in the aforesaid terms.

14] Hearing of the suit is expedited since the suit is pending for more than seven years.

(NITIN W. SAMBRE, J.)