

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.710 OF 2023

**SHAIKH SHAKIL S/O. SHAIKH KHAIRUDDIN
VERSUS
BILKIS BEGUM W/O. SHAIKH SHAKIL AND OTHERS**

Mr. S. A. S. Shaikh, Advocate for the petitioner

Mr. V. R. Gadekar, Advocate for respondent Nos. 1 to 4.

CORAM : R. M. JOSHI, J.

DATE : 4th AUGUST, 2023

P.C. :-

1. This petition takes exception to the order dated 20/12/2021 passed by the learned Family Court, Aurangabad rejecting the application below Exhibit 18 for setting aside no written statement order.

2. Learned counsel for the petitioner states that the delay caused in filing of the written statement as well as preferring the application for condonation of delay and it's non persuasion was not deliberate. According to him it was a Covid-19 pandemic period and hence in the peculiar facts and circumstances delay could not be said to be deliberate. Learned counsel for the respondent opposed the petition.

3. Considering the fact that the written statement could not be filed by the petitioner herein during the period of Covid-19 pandemic,

could be no more justified reason to condone the same. Apart from this though the learned Family Court can not be said to be at fault while rejecting the application by observing that the petitioner has failed to pursue application executing for a long period of time, however interest of justice requires that the lis between the parties is decided on merit instead of its dismissal of technicality.

4. Having regard to the facts and circumstances in which the written statement was not filed in time, application (Exhibit 18) filed before Family Court is allowed. Delay stands condoned. The Family Court to take written statement on record, subject to petitioner paying Rs.5,000/- (Rupees Five Thousand only) to the respondent by way of cost. The Family Court to ascertain as to whether the cost so directed is paid to respondent herein or not before taking written statement on record. Learned counsel for petitioner states that the proceeding before the Family Court is scheduled for hearing on 25th August, 2023 and that cost would be paid on that day. The petition stands disposed of in aforesaid terms.

(R. M. JOSHI, J.)

ssp