

AGK

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

WRIT PETITION NO.12515 OF 2023

Rajkumar Ganesh Karambale ... Petitioner
V/s.
Vijaya Chandrakant Sakhare & Ors. ... Respondents

Mr. Datta H. Pawar for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 10, 2023

P.C.:

1. The petitioner is original defendant No.3 in a suit for partition. Suit summons were served on the petitioner on 27 July 2016. He appeared before the Trial Court on 17 September 2016. He filed application for setting aside 'no written statement' order on 14 November 2023. The delay in filing such application is around six years.

2. The reasons mentioned in the application is that necessary documents were not available with the petitioner. It is also stated that defendant No.3 was out of station and was not having knowledge of law.

3. All three reasons have not been accepted by the Trial Court to condone delay of six years.

4. In the present writ petition, the petitioner has pleaded that the petitioner was trying to settle the matter with parties to the suit. It was assured by the parties to the suit that the dispute will be settled. He believed the assurances. He, therefore, did not take steps to file written statement. It is only in November 2022 he became aware of continuation of the suit and, therefore, he filed the application.

5. In so far as explanation furnished in the writ petition is concerned, in my view, such explanation needs to be furnished before the Trial Court. Assuming such reason is correct, this reason cannot be termed as exceptional reason as contemplated by the Apex Court in **Kailash v. Nanhku** reported in (2005) 4 SCC 480.

6. The delay of six years in filing written statement cannot be condoned considering the reasons stated in the application.

7. There is no legal infirmity in the impugned order. The writ petition, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)