

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2523 OF 2017

Datta Seva Sahakari Patpedhi Ltd.	...	Petitioner
<i>Versus</i>		
Ramnath Sadashiv Koltharkar and Ors.	...	Respondents

— —

Mr. Satyajeet H. Joshi with Mr. Chinmay Joshi for the Petitioner.
Mr. Akhlaque M.S. Solkar for Respondent Nos.1A to 1C.

— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : June 26, 2023.

P. C. :

1. The petitioner's application for condonation of delay of 285 days in filing the written statement and for taking the written statement on record came to be dismissed *vide* impugned order dated 1st February, 2017.

2. Heard Mr. Satyajeet H. Joshi, learned counsel appearing for the Petitioner and Mr. Akhlaque M.S. Solkar, learned counsel for the Respondent Nos.1A to 1C.

3. Learned counsel appearing for the petitioner submits that the petitioner is a *pathpedhi* who had purchased the subject premises

from the original defendant no.2, which is the subject matter of challenge in S.C. Suit No.133 of 2013. He submits that an appearance was caused on 10th February, 2014, after the service of summons, as there was settlement talks between the parties, the written statement could not be filed so as to not jeopardize the amicable settlement of the issue. He would further submit that the trial Court has disbelieved the factual position as the same is not reflected in the roznama. He relies upon the decision of the Apex Court in the case of ***Kailash vs. Nanhku and Others [(2005) 4 SCC 480]***, and in particular in paragraph 33 thereof.

4. *Per contra*, learned counsel appearing for the respondent Nos.1A to 1C, legal heirs of the original deceased-plaintiff strongly opposes the application. He submits that the provisions of Order 8 Rule 1 of the Civil Procedure Code, 1908, prescribe a period of 30 days for filing of written statement from the date of service of summons and there is no sufficient explanation tendered for condonation of delay and for taking of written statement on record.

5. Considered the submissions of the parties.

6. It is settled position that the period for filing of the written

statement provided under Order 8 Rule 1 of the CPC is directory and not mandatory. The reason stated in the application is that there were settlement talks between the petitioner and the Respondents for amicable settlement of the dispute. This position is not stated to be disputed. The trial Court has rejected the explanation as details of the meeting were not provided. The fact remains that for a considerable period from 12th June, 2014 to 31st July, 2015, the Court was vacant/on leave and as such, the fact of ongoing settlement could not have been recorded in the roznama.

7. Learned counsel for the Petitioner submits that the evidence has not yet commenced. In my opinion, considering that the trial has not been commenced, in the interest of justice, the application filed by the Petitioner for condonation of delay and for taking on record the written statement deserves to be allowed subject to payment of costs of Rs.25,000/-. The costs to be paid by the Petitioner to the Respondent Nos.1A to 1C within a period of two weeks from today.

8. The writ petition stands allowed in the above terms.

(Sharmila U. Deshmukh, J.)

[This order is corrected pursuant to the Speaking to the Minutes order dated 7th July, 2023.]