

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 1633 OF 2023

IN

SUIT NO. 381 OF 2022

Penelope Bocarro & Ors.

...Applicants/Original
Defendant Nos. 1,2 & 3

In the matter of

Danita Bocarro

...Plaintiff

Versus

Penelope Bocarro & Ors.

...Defendants

Mr. Nawaz Haindaday i/by Gazala Parveen Shaikh & Aditi Dave for
the Applicants (Original Defendant Nos. 1, 2 & 3).

Mr. Kiran Mohite for the Plaintiff.

CORAM : R.I. CHAGLA J

DATE : 27 April 2023

ORDER :

1. By this Interim Application, the Applicants/Original Defendant Nos. 1, 2 & 3 have sought condonation of delay in filing the Written Statement. The delay is stated to be of 70 days.

2. The Applicants have explained the delay in paragraph 4 of the Interim Application. It is stated that the affairs of the Applicants were managed by the husband of the Applicant No. 1 and father of the Applicant Nos. 2 and 3 who passed away 11 months ago. The family was still in mourning at the time, when they received writ of summons on 19th December 2022.

3. The Applicants have further stated that since the subject matter of the subject Suit pertained to incidents which occurred more than 45 years ago and hence, it was necessary to conduct extensive search of documents and records to prepare the Written Statement. The Applicant No. 3 is a resident of Canada for the last 26 years. The Applicant No. 2 was also a resident of New Zealand and had returned to India around seven years ago. The Applicant No. 1 who was living with her late husband, Julian Bocarror, is almost 80 years old and hence, could not contribute much in locating the documents. The Applicants required considerable time and effort for tracing the documents and particularly, considering that Applicant No. 3 was in India for a very short duration, due to the time constraints of work commitments, there is delay in filing the Written Statement which is stated to be inadvertent.

4. Learned Counsel appearing for the Plaintiff has formerly objected to the relief sought for in the Interim Application.

5. I have considered the averments in the Interim Application as well as taken note of the fact that the delay is of 70 days, which in my view, has been satisfactorily explained. Hence, the relief sought for is granted and following order is passed. :-

(i) Delay in filing the Written Statement is condoned.

(ii) Office shall accept filing of the Written Statement of the Applicants/Original Defendant Nos. 1, 2 & 3.

(iii) Interim Application is accordingly, disposed of.

[R.I. CHAGLA J.]