



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

923 WRIT PETITION NO. 12475 OF 2019

1. Smt. Nusrat Sultana w/o Munwarkhan Pathan,
2. Mujibkhan s/o Munwarkhan Pathan

...Petitioners

Versus

1. Smt. Iqbalbee Munwarkhan Pathan,
2. Smt. Sultana Munwarkhan Pathan,
3. Majidkhan s/o Munwarkhan Pathan.

...Respondents

...

Advocate for the Petitioner : Mr. Jadhavar Santosh S.
Advocate for Respondents No.1 and 2 : Mr. V. P. Latange

...

CORAM : R. M. JOSHI, J.

Dated : June 19, 2024

PER COURT :-

1. Heard. The petition is heard finally by consent of both sides.
2. The petitioners are original defendants in Regular Civil Suit No.1/2013 which is filed by plaintiffs against the defendants for declaration of ownership. The petitioners/ defendants No.1 and 2 were served with the summons of the Court, however, failed to file written statement in time. Application Exhibit 43 is filed for condonation of delay in filing of the written statement. Said application is rejected by the learned Trial Court. Hence, this petition.
3. Learned Counsel for the petitioners submits that the written

statement filed by other defendants belatedly was allowed by the learned Trial Court whereas the application filed for condonation of delay by the present petitioners is rejected. It is his submission that having regard to the nature of suit, there is no propriety in not permitting these defendants to file their written statement.

4. Learned Counsel for the respondents/original plaintiffs opposed the petition by contending that the duty of the defendants to file written statement within time, and hence, there is no perversity in the impugned order to cause interference therein.

5. It is settled position of law that unless there is a deliberate or inordinate delay in filing written statement, ordinarily the Court should be liberal to permit the parties to file written statement. It is always in the interest of the parties that lis between them is decided on merits instead on technicality. In the instant case, having regard to the fact that the suit is for declaration of ownership, the written statement of these defendants is necessary. The plaintiffs were unable to show any irreparable loss or prejudice will be caused to them by taking the written statement on record filed these defendants. Having regard to the aforesaid facts in this case

interference is called in the impugned order, as a result of which, the impugned order stands set aside. The petitioners are permitted to file written statement in Regular Civil Suit No.01/2015.

6. This Court is informed that by order dated 15/10/2019, the petitioners were directed to deposit some of Rs.30,000/- before the Trial Court.

7. Learned Counsel for the petitioners, on instructions, makes statement that said amount is already deposited before the Trial Court. On account of the delay caused by the defendants in filing written statement, certainly some inconvenience is caused to the plaintiffs, and as such, the plaintiffs are permitted to withdraw the said amount which should be treated as a cost for admitting the written statement to be filed on record.

(R. M. JOSHI, J.)

vj gawade/-.