

Ajay

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

WRIT PETITION NO. 2214 OF 2024

Nath Sopan Nikam

.. Petitioner

Versus

Hindurao Vitthal Bhagat and Ors.

.. Respondents

-
- Ms. Sharmishtha D. Patil i/by Mr. Kishore Ajetrao, Advocate for Petitioner.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2024.

P.C.:

- 1.** Mentioned out of turn at the time of rising the Court.
- 2.** Heard Ms. Patil, learned Advocate for the Petitioner.
- 3.** The impugned order is dated 07.06.2022 passed in Application filed below Exhibit “80” in Regular Civil Suit No.248 of 2020 seeking setting aside of No WS order which is at Exhibit “C” - page No.23 of the Writ Petition. No WS order was passed on 01.08.2011 whereas the Application for setting aside of the said order is filed after a delay of more than 10 years on 18.02.2022.
- 4.** Ms. Patil would submit that the only reason attributable is because of the old age of the Defendant. The learned Trial Court has not found the said reason to be justified and convincing at all and has therefore rejected the Application. It has been noted by the learned

Trial Court that the Suit was originally filed in the year 2011, but it was subsequently dismissed and thereafter restored. After restoration of the Suit, Defendant had appeared on 13.04.2011 through his Advocate, but thereafter did not file his written statement. Admittedly there is a delay of 10 years.

5. Ms. Patil has drawn my attention to the Application below Exhibit “80” which is at Exhibit “B” - page No.21 of the Writ Petition. It is stated that the health of Defendant did not remain healthy for long in order to give instructions to his Advocate and in the event if Defendant is prevented from filing the written statement, it would be extremely prejudicial to the case of Defendant.

6. Ms. Patil would submit that the reasons which are stated in the Application dated 18.02.2022 are the only reasons but she would submit that in view of the fact that when the Suit was originally filed in the year 2011 and subsequently dismissed, the learned Trial Court had restored the said Suit proceedings and therefore in that view of the matter despite delay of 10 years, this Court should take a reasonable humanitarian approach and condone the delay and allow Defendant to file his written statement so that he does not get non-suited. In her usual fairness, she would submit that this Court may consider levy of appropriate costs so as to ensure that Defendant is enabled to file his written statement and the *lis* between the parties is determined in

accordance with law.

7. She would next submit that the Suit (Plaint) which is at Exhibit “A” - page No.11 of the Writ Petition has been filed for declaration and injunction and therefore despite the delay in filing the written statement, it does necessitate an adequate reply of Defendant to defend his case.

8. Considering the aforesaid submissions, admittedly there is a delay of 10 years. There is no overt reason given by the Applicant / Defendant for the delay that has been caused. It is also equally true that day to day delay need not be explained. What has been stated in the Application is that Defendant’s health remained irregularly and improper for a long period of time. Though the learned Trial Court has not found the said reason to be justified and convincing, I am inclined to take an opposite view in view of the aforementioned observations and findings and more specifically because in the past the Suit was dismissed and restored back on the record and file of the case. The explanation offered in the Application is accepted for condonation of delay subject to costs.

9. However setting aside of the order dated 07.06.2022 and allowing Defendant to file his written statement is not unconditional. It is directed that Defendant / Petitioner shall pay costs of Rs.10,000/- which shall be condition precedent for condoning the delay and

allowing Defendant's WS to be taken on record. The costs of Rs.10,000/- shall be paid by Defendant / Petitioner to the Plaintiffs within a period of three weeks from today and copy of the receipts shall be placed before the learned Trial Court. Once copies of the receipts as directed are placed before the learned Trial Court, the learned Trial Court shall ascertain compliance and allow the Defendant to file his written statement.

10. In view of the above, the impugned order dated 07.06.2022 stands quashed and set aside subject to payment of costs as directed above. No WS order dated 01.08.2011 is also quashed and set aside. Application below Exhibit "80" is allowed subject to above directions and compliance.

11. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]