

HARSHADA H. SAWANT  
(P.A.)

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

**WRIT PETITION NO.2037 OF 2023**

Shahabuddin Umar Kazi

.. Petitioner

**Versus**

Allabaksha A Rahiman Kazi and Ors.

.. Respondents

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- Ms. Sejal A. Hariyan, Advocate for Petitioner.
- Mr. Rishi N. Bhatt i./by Kishor Ajetroa, Advocate for Respondents.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : MARCH 20, 2024**

**P.C.:**

**1.** Heard Ms. Hariyan, learned Advocate for Petitioner and Mr. Bhatt, learned Advocate for Respondents.

**2.** The Writ Petition impugns order dated 12.12.2022 passed in Application filed below Exhibit-5 by Defendant No.1 seeking condonation of delay for filing of Written Statement. The suit is filed for seeking declaration and injunction in respect of suit property which is also governed by Mohammedan law between the parties.

**3.** The Defendant No.1 appearing in the suit proceedings before the Trial Court failed to file Written Statement within the prescribed period. As such 'No Written Statement' order below Exhibit-1 was passed. In the Application filed below Exhibit-51, Defendant No.1 sought setting aside of 'No Written Statement' order passed below Exhibit-1 on the ground that during the interregnum

that is the period of 7 years during which delay occurred, Defendant No.1 himself suffered from physical and mental illness. In support of the same, the Petitioner has appended substantial documentary evidence to the present Writ Petition as also the additional Affidavit dated 13.03.2023 filed in the present Writ Petition to justify the medical and mental condition of Petitioner as reasons for the delay. In paragraph No.3 of the Application it is stated that uncle of Defendant No.1 was residing with the Petitioner and who out of love and affection had executed oral gift deed dated 19.02.2016 (Hibbanama) in favour of Petitioner. This uncle of Petitioner met with a dangerous accident at Miraj and his medical treatment continued until the year 2020 and thereafter he passed away on 04.04.2021. Due to this Petitioner suffered with emotional and mental trauma and in support of this submission, he has appended medical papers to the additional Affidavit.

**4.** During the said time, Petitioner's business venture of buying and selling motor cycle and cars situated at Pune and Miraj was burned down due to accidental fire leading to a huge loss and set back to the Petitioner which increased his mental trauma. During the interregnum Petitioner was running a hotel called 'Noor Hotel' at Miraj, but during the COVID-19 Pandemic period he suffered heavy loss and resultantly had to close down the said business. During the

same time on 06.10.2019 another relative i.e. aunty of the Petitioner and cousin brother of the Petitioner also passed away. All such details are stated in the Affidavit. It is also stated that Petitioner is presently undertaking orthopedic and rehabilitation consultation from Sancheti Institute of Orthopaedics and Rehabilitation, Pune for treatment. Relevant documents in this regard are also appended to the additional Affidavit. I have perused the details which have been annexed to the additional Affidavit. The entire documentation is of more than 90 pages which are all related to the Petitioner's medical condition as also the incidents which occurred in the interregnum.

**5.** On perusal of the same, there is no doubt and reason than to believe that Petitioner i.e. Defendant No.1 before the Trial Court did suffer during the said period. Though the delay is contemplated to be of 7 years in filing the Written Statement, in view of the extant order of the Supreme Court arresting the period of limitation between 15.03.2020 and 28.02.2022 in view of the COVID-19 Pandemic lockdown, the said period will have to be deducted and therefore the actual period of delay would stand substantially reduced by more than two and half years and in that view of the matter, the delay would be a little over five years.

**6.** The material placed on record cannot be disbelieved and in that view of the matter, the impugned order dated 12.12.2022 is

quashed and set aside. One of the reason given in the impugned order is that if the Petitioner i.e. Defendant No.1 would file his Written Statement, it would cause more delay in expediting the hearing of the suit proceedings. That certainly can be taken care of by giving appropriate directions to the Trial Court. Setting aside of the order dated 12.12.2022 and allowing Application filed by the Petitioner i.e. Defendant No.1 below Exhibit-51 is not unconditional considering the delay that is involved. Hence Petitioner is directed to pay costs of Rs.10,000/- each to the three Respondents (Plaintiffs before the Trial Court) in the facts and circumstances of the present case. This in my opinion would meet the ends of justice and would be in the interest of justice to balance the convenience of the parties. The costs shall be paid within a period of four weeks.

**7.** At the request of Mr. Bhatt, this Court is also inclined to direct the learned Trial Court to dispose of Regular Civil Suit No.161 of 2015 as expeditiously as possible and in any event within a period of six months from today. Parties are directed not to take any unnecessary adjournments and more specifically this would apply to Defendant No.1. Parties to co-operate with the learned Trial Court. Trial Court is directed to give adjournments to the parties only if they are utmost necessary due to any emergency or exigency and decide Regular Civil Suit No.161 of 2015 without being influenced by any

observations in the impugned order and as also this order strictly in accordance with law on the basis of the evidence led by the parties before the Trial Court. Payment of costs shall not be condition for the Trial to be differed and the hearing of the suit shall commence immediately. Trial Court will ensure that costs are paid to the 3 Plaintiffs as directed herein within a period of two weeks and receipt is placed on record thereafter.

**8.** Parties are directed to appear before the learned Trial Court alongwith authenticated copy of this order on 22.02.2024 at 11.00 a.m. and the learned Trial Court shall fix the schedule for hearing of the suit as per its convenience. Needless to state that the written statement of Defendant No.1 shall be taken on record and the order of “No WS” is set aside by this Court. If the costs are not paid as directed, then this order shall automatically stand vacated and the “No WS” order shall revive.

**9.** With the above direction, Writ Petition is disposed.

H. H. SAWANT

[ MILIND N. JADHAV, J. ]

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