

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16348 OF 2023

Deepa Tapadar

.. Petitioner

Versus

Laxmi Tapan Saha & Ors.

.. Respondents

-
- Mr. Kevin Gala for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 05, 2024

P. C.:

1. Heard Mr. Gala, learned Advocate for Petitioner.
2. This Writ Petition takes exception to the order dated 04.09.2023 passed by Bombay City Civil Court at Bombay, Borivali Division, Dindoshi (Branch) in Notice of Motion No. 179 of 2020. The said order is appended at Exh. C, page Nos. 37-41 of the Writ Petition. Copy of the Petition has been served on the Respondents and affidavit of service dated 05.02.2024 has been filed which is taken on record.
3. By virtue of the impugned order, condonation of delay of 830 days in filing written statement has been rejected on the ground of negligence on the part of Defendants for a period of more than two years by rejecting the grounds made out by the Petitioner for showing sufficient cause as stated in the Application. It was contended by Petitioner / Defendant No. 1 that pursuant to service of writ of

summons in July 2017, he engaged services of an Advocate who did not prepare the written statement and it is only at a much later stage when he realized that the written statement was not filed, Defendant engaged a new Advocate who prepared the same. It is held by the learned Trial Court that it is mandatory for the party to explain the delay for each and every day which I am not inclined to uphold. In view of rejection of the Notice of Motion, written statement of Defendant could not be filed.

4. Mr. Gala would submit that written statement is ready and if so permitted, shall be filed within a period of two weeks from today.

5. I have perused the Notice of Motion and in view of the reasons mentioned therein and the fact that the litigant should not suffer though it is also the duty of the litigant to pay attention and seek answer to the steps being taken by his Advocate, I am inclined to allow the present Writ Petition. Writ Petitioner before me is a widow. Hence, Writ Petition is allowed and the impugned order dated 04.09.2023 is set aside subject to payment of costs of Rs. 5000/- to be paid by the Petitioner to the Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today. On producing the receipt of payment, learned Trial Court shall accept the written statement filed by the Defendant within a period of two weeks from today.

6. In view of the above directions, Writ Petition is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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