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24wp3942.25

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

24 WRIT PETITION NO. 3942 OF 2025

PURUSHOTTAM ARUNRAO SHITOLE

....Petitioner

VERSUS

KHONDIDAS BABUBHAI BAPALIPARA PATEL

.....Respondent

Mrs. Sabahat T. Kazi, Advocate for the petitioner

Mr. G. L. Gujar, Advocate h/f Mr. M. V. Bhamre, Advocate for the
respondent

CORAM : KISHORE C. SANT, J.

DATE : 28th APRIL, 2025

P. C.

1. Heard the learned advocate for the petitioner.

2. The writ petition is filed challenging an order passed by the learned CJSD, Shahada dated 16-12-2025 in RCS No. 66/2024 on an application below Exh.1 & 16. By way of impugned order the learned Judge has condoned the delay of 41 days and permitted the defendant-respondent to file written statement on record.

3. It is the case of the petitioner-plaintiff that though the respondent was served on 29-04-2024, he did not file written statement. On two dates he filed applications only for an adjournments and did not seek permission to file written statement on record.

4. It is further case of the petitioner that the reason assigned for delay is also false and against the factual position. The application still came to be allowed and thus petitioner is before this court.

5. The learned advocate for the petitioner vehemently argued that it was necessary for the defendant-respondent to give specific reason as to why no written statement could be filed within a period of 90 days. Though the defendant had appeared on earlier occasion and sought adjournment, there was no whisper of filing of the written statement. He submits that amendment of 2002 was specifically introduced to curtail the

delay in trial and suits are disposed of at the earliest. In such circumstances, it was not appropriate on the part of the learned Judge to allow the application and condone the delay. From the application itself it is clear that there is no sufficient cause mentioned. He, thus submits that the order deserves to be quashed and set aside.

6. The learned advocate for the respondent submits that delay is only of 41 days. The learned court has rightly allowed the application. By deciding the application, the courts are not expected to take Higher Technical approach at the most courts could have imposed some costs. This court comes to a conclusion that the inconvenience is caused to the other side.

7. After hearing the parties, it is seen that delay is of 41 days is condoned. It is trite law that procedure is only to assist the court & is not to be taken to refuse fair opportunity to the parties. In the present case by allowing the application no prejudice as such is caused to the petitioner.

8. However, it is necessary to compensate the other side when there is delay in filing the application.

9. Considering the facts of this case, in the order dated 16-12-2025, no interference is required. However, at the same time, it is necessary to impose cost on the defendant. The defendant-respondent therefore, is directed to pay the cost of Rs.5000/- to be deposited in the trial court within four weeks from today. The writ petition stands dismissed. The impugned order is quashed and set aside subject to the condition of deposit of amount as above.

[KISHORE C. SANT, J.]