

Jvs.

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

WRIT PETITION NO. 12050 OF 2017

Mrs. Mangal Ashok Kamble	}	Petitioner
Versus		
Habib Huseinkarmali Patel	}	Respondent

Ms. Shreya Parikh a/w Mr. Prateek Pai
and Mr. Vishal Khanavkar for petitioner.

Mr. Pradeep J. Thorat for respondent.

CORAM: ALOK ARADHE, CJ.

DATE: JULY 28, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the validity of the order dated 20th January 2017 passed by in Miscellaneous Appeal No.232 of 2016 by the Court of Small Causes, Mumbai.

2. Facts giving rise to filing of the writ petition, in nutshell, are that the respondent had filed RAE Suit No. 1774 of 2000 against the petitioner and her sub-tenant. During the pendency of the suit, the husband of the petitioner expired on 10th August 2001. Writ of summons was served on petitioner no. 1 on 20th January 2001. During the pendency of the suit, the petitioner sublet the premises. Thereupon, the averments made in the plaint were amended and as per the bailiffs report, the petitioner was again served with writ of summons on 4th December 2006, however, the petitioner did not appear in the proceedings. Eventually, the suit was decreed on 8th July 2010

ex-parte. Respondent no. 1 initiated execution proceedings. Notice of execution proceedings was served on the petitioner on 13th January 2015. The petitioner, thereupon, filed an application on 18th March 2015 seeking condonation of delay in filing the application for setting aside the *ex-parte* decree. The aforesaid application has been rejected by the Trial Court on 10th March 2016. The aforesaid order has been affirmed in appeal on 20th January 2017. Hence this petition.

3. Learned counsel for the petitioner submits that the writ of summons served on the petitioner was in English and therefore, she could not understand the writ of summons and appear in the proceedings in the suit. It is submitted that the Trial Court as well as the Lower Appellate Court ought to have appreciated that there was sufficient cause for condonation of delay in filing the application seeking to set aside the *ex-parte* decree.

4. On the other hand, learned counsel for the respondent has supported the order passed by the Trial Court.

5. I have considered the rival submissions and perused the record.

6. Admittedly, the writ of summons was served on 20th January 2001. Again, the petitioner was served with the amended plaint on 4th December 2006. Despite service of notice, the petitioner did not choose to appear in the suit and to defend herself. The application was filed with inordinate delay of 1642 days for setting aside the *ex-parte* decree, which was not sufficiently explained. The Trial Court as well as the Lower Appellate Court have assigned cogent and valid reasons for recording a finding that sufficient cause for condonation of delay

was not made out. In the facts and circumstances of the case, the concurrent finding of fact recorded by the Trial Court as well as the Lower Appellate Court does not call for any interference of this Court in exercise of power under Article 227 of the Constitution of India.

7. In the result, the writ petition fails, which is hereby dismissed.

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signed by
JAYANT
VISHWANATH
SALUNKE
Date:
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(CHIEF JUSTICE)