



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

WRIT PETITION NO. 850 OF 2023

Dayanand s/o Bhushanrao Ambekar
Age : 33 years, Occ : Private Service,
R/o Khanapure Niwas, Behind Kore Garden,
Near Bholenath Building, Motinagar, Latur,
Tal : Latur, Dist : Latur

... PETITIONER

VERSUS

Ashok S/o Bhaurao Biradar
Age : 66 years, Occ : Agri.,
R/o Pimpri, Tal : Udgir,
At/p R/o. Motinagar, Latur,
Tq. & Dist. Latur,

... RESPONDENT

...

Mr. V.G. Kodale, Advocate for the Petitioner
Mr. Hanmant V. Patil, Advocate for respondent no.1.

...

CORAM : VAISHALI PATIL – JADHAV, J.

RESERVED ON : AUGUST 24, 2026

PRONOUNCED ON : SEPTEMBER 04, 2026

J U D G M E N T :

Rule. Rule made returnable forthwith and heard finally with the consent of the learned advocates for the parties.

2. By way of present petition, the petitioner, who is the original defendant in Rent Suit No. 4/2021, has challenged the

legality and correctness of the orders dated 28.09.2022 passed by the learned 2nd Joint Civil Judge, Senior Division, Latur, (hereinafter referred to as “Trial Court”) below Exhibits 10 and 11. By the impugned orders, the trial Court rejected the petitioner's application filed at Exhibit 10 for seeking time to file written statement and the application filed at Exhibit 11 for setting aside the ex-parte order.

3. Brief facts of the case are that the respondent-original plaintiff filed Rent Suit No. 4/2021 for recovery of rent and possession against the present petitioner on 18.02.2021. The suit summon was duly served upon the petitioner on 14.08.2021, and the date fixed for appearance was 16.08.2021. The petitioner failed to appear, and consequently, an ex-parte order was passed by the trial Court on 16.12.2021.

Thereafter, on 27.01.2022, the Advocate on instructions of the petitioner appeared and on the same day, his advocate filed two applications - Exhibit-10 for seeking time to file the written statement and Exhibit-11 for setting aside the ex-parte order. By the impugned orders dated 28.09.2022, the trial Court rejected both applications.

4. Learned advocate for the petitioner submits that the petitioner could not appear before the trial Court on the date fixed for appearance, due to sufficient cause i.e. the surge of COVID-19 pandemic. Reliance was placed upon the judgments of the Hon'ble Supreme Court in ***Prakash Corporates Vs. Dee Vee Projects Limited*** reported in **AIR 2022 SC 946** and ***In Re: Cognizance for Extension of Limitation*** reported in **(2022) 3 SCC 117** to submit that the period of limitation was extended by the Hon'ble Supreme Court in view of the pandemic, and the petitioner's case is covered under the same extension.

It was submitted that the petitioner contacted his advocate and took immediate steps to appear before the Court as soon as he became aware of the ex-parte order. Further regarding the absence of signature and verification on the applications, learned advocate submitted that since the matter was on the board and the petitioner was not present in Court on 27.01.2022, the advocate before the trial Court filed the applications on his instructions. It was not possible to get the documents verified on the same day due to the urgency of the matter.

Learned advocate lastly submitted that the trial Court has rejected the applications on very technical grounds which has resulted in grave injustice and has deprived the petitioner of his valuable right to defend the suit on merits, and therefore, prayed for quashing the impugned orders and allowing the applications.

5. Per contra, learned advocate for the respondent strongly opposed the petition. It was submitted that the petitioner has failed to show a just and sufficient cause for his non-appearance on 16.12.2021, as required under Order IX, Rule 7 of the Code of Civil Procedure, 1908. The reason of COVID-19 is a mere afterthought and is not acceptable, as the courts were functioning and there were no restrictions during the relevant period.

. Learned advocate lastly submitted that the applications were rightly rejected by the trial Court as they were not signed by the petitioner and lacked verification, and thus, prayed for dismissal of the petition.

6. Heard learned advocate Mr. V. G. Kodole for the petitioner and learned advocate Mr. H. V. Patil for the respondent. I have given careful consideration to the rival submissions and perused the record.

7. The trial Court rejected both applications, giving the following specific reasons:

(a) Exhibit 11: The Court held that (i) the application was not signed by the petitioner and was not supported by his affidavit; and (ii) the reason of COVID-19 pandemic was not a sufficient cause as the Court was functioning fully and restrictions had been lifted since August 2021.

(b) Exhibit 10: The Court held that the application was not maintainable as it sought time to file a written statement after an ex-parte order was passed, without first setting aside the said ex-parte order.

8. In the present case, the suit was filed on 18.02.2021 and the summon was served on the petitioner on 14.08.2021. It is pertinent to note that the summon was served at the time when the second wave of the pandemic was at its peak. The date fixed by the trial Court for appearance was 16.08.2021, but as

the petitioner failed to appear. Ex-parte order was passed on 16.12.2021. The petitioner was not aware about the passing of the ex-parte order. Meanwhile, he enquired with the Advocate and asked him to check the status of the suit. At that time, learned Advocate for the petitioner informed him that the matter is on today's board i.e. on 27.01.2022, and therefore, it was necessary to appear before the trial Court and after the consent of the petitioner, the learned Advocate appeared before the trial Court and filed the applications seeking time to file written statement and to set aside the ex-parte order. Both the applications were filed on the same day i.e. on 27.01.2022 and as the petitioner was not present in the Court, the learned Advocate filed both the applications without the verification and signature of the petitioner.

9. This chain of events indicates that the petitioner was active in taking steps to protect his rights as soon as he was able to ascertain the status of the suit. The delay is not inordinate and has been sufficiently explained by the extraordinary circumstances of Covid-19 pandemic. This reason is sufficient as required under Order IX Rule 7 of the Code of Civil Procedure, 1908.

10. This Court is of the considered view that the ends of justice would be better served if the petitioner is given an opportunity to contest the suit on merits rather than being rejected on technicalities. The procedural lapses in the present case, are curable and do not warrant the rejection of the applications. The explanation of COVID-19 pandemic, when viewed in the context of circumstances that prevailed during the relevant period constitutes a sufficient cause for non-appearance.

11. If the aforesaid circumstances are cumulatively considered then the petitioner needs to be given a chance as the reasons are not of such magnitude as to proceed in the matter ex-parte or to deny the petitioner leave to file the written statement.

12. For the reasons stated above, I pass the following order :-

ORDER

(i) The impugned orders dated 28.09.2022 passed below Exhibit-10 and Exhibit-11 by the learned 2nd Civil Judge, Senior

Division, Latur in Rent Suit No. 4/2021, are hereby quashed and set aside.

(ii) On 28.09.2022, the petitioner has filed the written statement, the same be taken on record.

(iii) The petitioner shall furnish an undertaking before the trial Court that he shall co-operate for expeditious disposal of the suit.

(iv) Writ Petition is allowed in above terms.

13. Rule is made absolute in the above terms.

**[VAISHALI PATIL – JADHAV]
JUDGE**