

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

WRIT PETITION NO.7391 OF 2015

Sagar s/o Rajaram Chouksey,
Age 40 years, Occu. Business,
R/o 1st Address Plot No.452,
Sector G, N-1, CIDCO,
Aurangabad

..Petitioner

Versus

1. The State of Maharashtra

2. Piyusha d/o Vinayakrao Dobade,
Age 23 years, Occu. Student
R/o C/o Vinayakrao Dobade,
at Post Bamni, Taluka Jintur,
District Parbhani

..Respondents

Mr Ali Zishan Zaidi, Advocate for petitioner
Mr B.A. Shinde, A.G.P. for respondent No.1
Mr V.V. Deshmukh, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 30th November 2015

PER COURT

1. The petitioner, respondent to the Hindu Marriage Petition No.173 of 2012 has suffered an order of 'No W.S.' The said order was sought to be set aside during pendency of the proceedings vide application Exh.36 which came to be allowed on 24th June 2014 subject to payment of costs of Rs.5,000/- within seven days. It is mentioned that said order was not complied with. Thereafter, another application Exh.48 came to be moved for setting aside the 'No W.S.' order dated 4th October 2014. The said application came to be allowed on 3rd January 2015 by the Joint Civil Judge, Senior Division, Parbhani subject to payment of additional costs of Rs.1,000/- in

addition to earlier costs of Rs.5,000/- and Rs.500/-. The said order was also not complied with. The petitioner now is trying to make out case for grant of permission to place on record written statement, as according to him, he has deposited the costs in this Court. Learned Counsel for the petitioner then would urge that written statement can be placed on record irrespective of the stage of suit, as the written statement can be filed even after the matter is closed for judgment. To substantiate his contention, he has relied upon the judgment of this Court in the matter of **Baburao s/o Sahebrao Deshmukh Vs. Maharashtra Insecticides Ltd.**, reported in **2004 (2) Mh.L.J. 719**, wherein this Court has permitted amendment of plaint after the matter was closed for judgment. In addition, learned Counsel for the petitioner has also relied upon the judgment of Calcutta High Court in the matter of **Ramesh Chandra Bhattacharyya Vs. Corporation of Calcutta and ors.**, reported in **AIR 1987 CALCUTTA 111**, so as to urge that the case is squarely covered by the said judgment, as the written statement can be filed even after the matter is adjourned for delivery of judgment.

2. Apart from above, learned Counsel for the petitioner then relied upon the judgment of Apex Court in the matter of **Sambhaji & Ors., Vs. Gangabai & Ors.**, reported in **2009 (1) ALL MR 921 (S.C.)** so as to canvass that though it is already held in the said matter that as per the provisions of Order VIII Rule 1 of the Code of Civil Procedure (hereinafter referred to as "the Code" for brevity) as regards filing of written statement within thirty days, is not mandatory. He would then

relying upon the said judgment to add that if the parties are related to each other, then the Court in such matters may take lenient view.

3. The above referred submissions are opposed by learned Counsel for respondent No.2 original petitioner to Hindu Marriage Petition on the ground that the issue is squarely covered by the Supreme Court judgment in the matter of **Arjun Singh Vs. Mohindra Kumar and ors.**, reported in **AIR 1964 SC 993**. In addition thereof, he has also placed on record the judgment of this Court in the matter of **Wasudeorao Babasaheb Sonone and anr. Vs. Jagannath Ramlalji Jugele** reported in **1986 (0) BCI 119** so as to canvass that at the stage of hearing, as is contemplated under Order XVIII, Rule 2 of the Code, placing of written statement on record, as claimed in present case cannot be permitted.

4. Having bestowed my anxious consideration to the submissions made by learned Counsel for the parties, it is required to be noted that the issue in the present case deals with the provisions of Order VIII, Rule 1, which is made obligatory to the parties to place on record their written statement within a period of 90 days. The mute question is, whether written statement could have been placed on record after the case judgment is closed for judgment, upon concluding hearing of the matter. The plain reading of Order VIII, Rule 1 of the Code mandates the parties to file written statement within thirty days of service of suit summons which for good reasons could be extended to ninety days, of course, discretion is vested in the Court to accept at

later stage, which is required to be exercised judicially. It is to be noted herein that in absence of specific inbuilt provisions providing as filing of written statement at any stage of the suit, the prayer of the petitioner cannot be considered.

5. So far as present case is concerned, it is required to be noted that after the proceedings were proceeded without written statement, the petitioner herein took his chance to argue the matter finally and thereafter filed application for setting aside the order of 'No W.S.' Learned trial Court allowed the said application subject to payment of costs of Rs.5,000/-, as is apparent from application Exh.36. Said order was not complied with and thereafter, another application Exh.48 came to be filed seeking permission to place on record the written statement. The Court thereafter showing indulgence in the interest of justice to place on record written statement subject to payment of costs of Rs.1,000/- in addition to earlier costs of Rs.5,000/-. The petitioner even has not complied the said order though trial Court has twice shown indulgence in favour of petitioner, has approached this Court through the present petition stating that by depositing the costs in this Court, he has shown his bona fides and hence, be permitted to place on record his written statement.

6. Prima facie, upon perusal of the copy of Roznama, it appears that the petitioner who is respondent-husband to the Hindu Marriage Petition is primarily responsible for the delaying the said proceedings, as is apparent from the Roznama. Apart from above, learned Court

below has shown indulgence in favour of the petitioner twice, for which the petitioner has not shown respect for.

7. Apart from above, the judgment that is relied upon by the petitioner, particularly in the matter of Baburao Vs. Maharashtra Insecticides Ltd. (cited supra), and the Apex Court judgment in the matter of Sambhaji Vs. Gangabai (cited supra), it is required to be noted here that the judgment in the matter of Baburao is based on the provisions of Order VI, Rule 17 of the Code, which provides that amendment can be allowed at any stage of the suit. From the plain reading of the said judgment, it is apparent that the Court has shown indulgence pursuant to the statutory provisions to that effect governing the field, whereas in the present case, it is obligatory on the part of party to file written statement within outer period of 90 days and thereafter though Court has shown indulgence in favour of petitioner, the petitioner has not honoured the same.

8. If the above referred conduct of the petitioner is examined in the light of provisions of Order VIII, Rule 1 of the Code, it is required to be held that the said provisions, in my opinion, will not permit the petitioner to file written statement, that too at the stage of concluding of the trial, when the matter was posted for judgment. The very verdict of the judgment in the matter of Baburao Vs. Maharashtra Insecticides Ltd. is that there is no right to the petitioner to file written statement at any stage of the suit. In view thereof, the law cited by learned Counsel for the petitioner in Baburao's case will be of hardly

any assistance to the petitioner.

9. Apart from above, the law as laid down by the Apex Court in the matter of Sambhaji Vs. Gangabai (cited supra), if taken into account, it is required to be noted that the learned trial Court has twice shown indulgence in favour of the petitioner, contrary to the time limit fixed under Order VIII, Rule 1 of the Code permitting the petitioner to place on record written statement which he has failed. Once the matter is posted for passing of judgment after conclusion of hearing, in my opinion, the said conduct of petitioner disentitles him for any relief. In view thereof, no case for interference is made out. Writ Petition fails, stands dismissed.

10. Learned Counsel for the petitioner is at liberty to withdraw the costs deposited in this Court.

(N.W. SAMBRE, J.)

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