

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

**WRIT PETITION NO. 2915 OF 2014
WITH
WRIT PETITION NO. 1941 OF 2014**

Deepak Baburao Birajdar ..PETITIONER

VERSUS

Vasant Kishanrao Birajdar and Others ..RESPONDENTS

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Mr. A.T. Kanawade, Advocate for petitioner in WP 2915/14 and h/f Mr.
A.A. Yadkikar, Advocate for petitioner in WP .1941/14.

Mr. A.G. Vasmatkar, Advocate for Respondent No.2.

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**CORAM : T.V. NALAWADE, J.
DATED : 17th OCTOBER, 2016**

ORDER :

1. The petitions are filed to challenge the orders made on Exhibit 104 and 100 in Regular Civil Suit No. 360 of 2007 pending before the Civil Judge Junior Division, Ausa. Both sides are heard.

2. The suit is filed for relief of partition and the parties are Hindus. The present petitioner was added as party in the year 2011 when the suit was filed in the year 2007. The summons of the suit was served on the present petitioner on 18th July, 2012 and the time which could have been given to file written statement came to an end on 18th October,

2012. After nine months the application for setting aside the order of No Written Statement and for permission to file written statement was filed. The Court has mentioned some circumstances showing that sufficient opportunity was given to file written statement and the application is rejected.

3. Submissions made show that the plaintiff has compromised the matter with some of the defendants and it is the present petitioner who wants to contest the matter. He wants to shows that there are some other properties also which need to be considered in the present matter. In view of the aforesaid relief claimed and the circumstances, this Court holds that opportunity needs to be given to the present petitioner to file written statement and take the decision on merits. It appears that in view of the order made by this Court dated 10th April, 2014, cost amount of Rs.2,500/- is already deposited by the present petitioner in the Trial Court. The plaintiff will be entitled to get that amount.

4. In the result, Writ Petition No. 2915 of 2014 is allowed. Order made by the Trial Court is set aside. Order of no W.S. is also set aside and the permission to file written statement is granted. Statement is made that alongwith the application at Exhibit 104, written statement is

filed. Same is to be taken on record. The cost amount is to be given to the plaintiff.

5. In Writ Petition No. 1941 of 2014, the order made by the Trial Court is set aside and permission to file written statement is granted subject to payment of costs of Rs.2,500/- (Rupees Two Thousand Five Hundred Only) by the petitioner to the original plaintiff. Both petitions are disposed of. This cost amount to be deposited within 15 days from today in Trial Court.

(T.V. NALAWADE, J.)

SSD