

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

**Writ Petition No.8033 of 2016**

- 1) Arun Kela,  
Age 58 years,  
Occupation : Business and  
Agriculture,  
R/o.7, Venus Apartment,  
Cuff Parade, Mumbai - 5.
  
- 2) M/s S.H. Khatod & Sons,  
Through Partner,  
Shriniwas B. Somani,  
Age 81 years,  
Occupation : Business and  
Agriculture,  
R/o Shriniketan, 5th Floor,  
86-A, Netaji Subhashchandra Road,  
Marine Drive, Mumbai - 2.

Through Power of Attorney Holder  
Prasad s/o Bhausaheb Chitalkar,  
Age 26 years,  
Occupation: Agriculture,  
R/o Kuranpur,  
Taluka Shrirampur,  
District Ahmednagar.

**.. Petitioners.**

**Versus**

- \* Sandhya Rajendraprasad Somani,  
Age 51 years,  
Occupation: Agriculture,  
R/o Belapur (Bk),  
Taluka Shrirampur,  
District Ahmednagar.

**.. Respondent.**

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Shri. Rahul R. Karpe, Advocate, for petitioners.

Shri. S.T. Shelke, Advocate, for respondent.

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**CORAM: T.V. NALAWADE, J.**

**DATE : 13 DECEMBER 2016**

**ORAL JUDGMENT:**

1) Rule, rule is made returnable forthwith. Heard both sides by consent for final disposal.

2) The petition is filed to challenge the order made on application, Exhibit 31 which was filed in Special Civil Suit No.30/2015 by present petitioners. The suit is pending in the Court of the Civil Judge, Senior Division, Shrirampur, District Ahmednagar. The suit is filed for specific performance of agreement of sale. It appears that the present petitioners appeared in the suit but written statement was not filed within 60 days and even within 90 days. Delay of 61 days is caused in filing written statement if the period of 90 days given is excluded. It is the case of the petitioners that they are residents of Mumbai and petitioner No.2 is aged about 80 years. It is their contention that due to absence of contact between

the Advocate and the party the written statement could not be filed.

3) Learned counsel for the petitioners submitted that the petitioners are in possession as per instructions given by his client. This stand creates probability that there are delaying tactics. However, nature of suit needs to be kept in mind at the time of consideration of such proceeding. When relief of specific performance is claimed, many things are required to be proved even by plaintiff and defendants can take specific stand in respect of these facts which are required to be proved by the plaintiff. In view of this circumstance, this Court holds that opportunity needs to be given to present petitioners, original defendants to file written statement and for that the order of "No WS" needs to be set aside.

4) Learned counsel for the respondent, plaintiff placed reliance on two reported cases. (1) **(2012) 12 SCC 461 (Suresh Kumar Kantilal Patel v. Balkrishna Laxmidas Kothari)**; and, (2) **AIR 2016 SC 86 (New India Assurance Company Limited v. Hilli Multipurpose Cold Storage**

**Private Limited).** On the other hand, learned counsel for the petitioners placed reliance on the case reported as **AIR 2005 SC 3353 (Salem Advocate Bar Association v Union of India).** Learned counsel for the respondent, plaintiff submitted that in recently decided case of New India Assurance Company (cited supra) the three-Judge Bench of the Supreme Court has held that the period which is fixed by the Civil Procedure Code is mandatory in nature and delay condonation application cannot be allowed. The case of Salem Advocate Bar Association was not referred by the Apex Court and there are still observations of Salem Advocate Bar Association's case which are to the effect that the provision is directory in nature.

5) In view of these circumstances this Court holds that the petition needs to be allowed. However, the respondent is made to spend on the present litigation. As there is possibility of attempts being made by defendants to protract the things, this Court holds that cost of Rs.25,000/- (Rs. Twenty Five Thousand Only) needs to be imposed for allowing the defendants to file written

statement.

6) In the result, the petition is allowed subject to deposit of cost of Rs.25,000/- (Rs. Twenty Five Thousand Only) by the defendants in the trial Court prior to 23-12-2016. If the amount is deposited it is to be presumed that the order made by the trial Court of "No WS" is set aside and the application filed for setting aside that order is allowed by this Court. If the amount is not deposited it is to be presumed that the present petition is dismissed. If the amount is deposited, it is to be paid to the plaintiff. Rule is made absolute in above terms. Authenticated copy is allowed to both sides.

Sd/-  
**(T.V. NALAWADE, J. )**

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