

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

WRIT PETITION NO. 12519 OF 2015

DEIVASHALA RAMESH SHINDE
VERSUS
SANTOSH TUKARAM DHOKANE

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Advocate for Petitioner : Shri Ajit Gaikwad h/f Shri Londhe Shashikant S.

Advocate for Respondent : Shri S.A.Shaikh h/f Shri Deshmukh Sachin S..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th September, 2017

Per Court:

1 The Petitioner is aggrieved by the orders dated 24.08.2015 and 03.09.2015 by which the Trial Court has rejected the applications (Exhibits 16 and 17) filed by the Petitioner/ Plaintiff contending that the Written Statement should not be taken on record and the judgment be pronounced under Order VIII Rule 10 of the Code of Civil Procedure.

2 The learned Advocate for the Petitioner has drawn my attention to the eight grounds formulated in this petition.

3 I have considered the submissions of the learned Advocates.

4 The issue is that the Defendant received the court summons on 24.04.2015. The Written Statement was filed on 29.07.2015 thereby, causing the delay of about 05 (five) days as prescribed under Order VIII

Rule 1 of the Code of Civil Procedure. The grievance is that a separate application was not filed for seeking permission for condonation of five days delay.

5 The record reveals that the application under Order VIII Rule 10 has been filed by the Petitioner/ Plaintiff on 14.08.2015, which is after the Trial Court accepted the Written Statement on record and granted an exhibit number. The record reveals that no objection was raised when the Written Statement was filed on 29.07.2015.

6 For an issue of five days delay, that the Petitioner/ Plaintiff has brought this petition to this Court. Apparently, the litigation appears to be frivolous. The suit filed by the Petitioner/ Plaintiff itself has got delayed on account of his own conduct. This was, therefore, a fit case for imposing costs on the Petitioner. However, the learned Advocate for the Petitioner pleads that the costs may not be imposed as the Petitioner is a lady and is about 55 years of age. Her only source of income is agriculture.

7 Considering the above, I do not find that the impugned orders dated 24.08.2015 and 03.09.2015 rejecting the applications (Exhibits 16 and 17) could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.