

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

**WRIT PETITION NO.9015 OF 2012
WITH
WRIT PETITION NO.9846 OF 2016**

Manikchand Nihalchand Solanki

... Petitioner
(Orig. Deft. No.7)

Versus

1(a) Smt.Vaishali Ashok Mali And Ors.

... Respondents
(Respondent No.1 orig.
Plaintiff & Respondent
Nos.2 to 7 are orig.
Defendant Nos.1 to 6

.....

Ms.Rohini M. Amin for the Petitioner.

Mr.Sandeep V. Marne for Respondent Nos.1A & 1B in Writ Petition
No.9015 of 2012.

....

CORAM : Ravindra V. Ghuge, J.

DATE : 16 March 2018

P.C. :

1. Both these Petitions are taken up together since the second Petition seeks to challenge the rejection of application – Exhibit 78 seeking time to file the written statement in Regular Civil Suit No.1818 of 2004 and the first Petition has been filed, though earlier in point of time, for challenging the order dated 26 August 2010 by which the application – Exhibit 82, praying for taking the Written Statement on record, has been rejected.

2. I have considered the strenuous submissions of the learned advocates for the respective sides. It is vehemently submitted on behalf of the Plaintiff that the whole endeavor of the Petitioner/Defendant is to delay the matter since the Suit is of 2004. Though the Petitioner was added subsequently, the

impugned order dated 15 February 2010 has been challenged in Writ Petition No.9846 of 2016, after 6 years.

3. It is well settled that when it comes to filing of a Written Statement, though the provisions under Order 8 Rule 1 of the CPC prescribing a limitation of 90 days has been held to be directory in nature, the Defendant cannot be permitted to delay the proceedings so as to cause manifest inconvenience and serious hardships to the Plaintiff. Though in such circumstances, a pragmatic approach is to be adopted, rather than taking a pragmatic view, of permitting the Written Statement to be taken on record, if the delay appears to be inordinate, the Plaintiff can be compensated by imposition of costs.

4. Though the learned counsel for the Petitioner prays for a lenient approach and though the learned counsel for the Plaintiff prays for dismissal of these Petitions by imposing heavy costs, it appears that on ill advise, the Petitioner, instead of challenging the order dated 15 February 2010 with promptitude, chose to challenge the order dated 26 August 2010 by filing Writ Petition No.9015 of 2012 on 17 July 2012. After realizing that the order dated 15 February 2010 needs to be assailed, that the Petitioner has filed Writ Petition No.9846 of 2016.

5. Considering the above and keeping in view that if the Petitioner is disallowed from filing a Written Statement, the doors of litigation would be closed on him, in as much as, he would practically be rendered defenceless, in the pending Suit, this Petition deserves to be allowed.

6. As such, both these Petitions are partly allowed. The impugned orders dated 15 February 2010 and 26 August 2010 are quashed and set aside. Application-Exhibit 82 is allowed and the Written Statement filed by the Petitioner/orig. Defendant No.7 shall be taken on record subject to the Petitioner depositing costs of Rs.10,000/- before the Trial Court in Regular Civil Suit No.1818 of 2004 on or before 13 April 2018, failing which, the Written Statement would not be taken on record. After the costs are deposited, the Plaintiff would withdraw the said amount without conditions.

7. Since the Suit has been lodged in 2004 and is pending adjudication on account of pendency of these Petitions, I deem it proper to direct the Trial Court to decide Regular Civil Suit No.1818 of 2004 as expeditiously as possible and in any case, on or before 30 March, 2019.

(Ravindra V. Ghuge, J.)