

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

925 WRIT PETITION NO.3488 OF 2014

DR. GOVIND DIWAKAR KULKARNI AND ANOTHER
VERSUS
ASHOK BHASKARRAO KULKARNI AND ANOTHER

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Advocate for Petitioners : Mr. A.V. Lavte h/f. Mr. S.J. Salunke
Advocate for Respondents 1 & 2 : Mr. R.P. Dhase

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CORAM : T.V. NALAWADE, J.
DATED : 14/02/2019.

ORDER :

1. The petition is filed to challenge the order made by Civil Judge, Junior Division, Georai, District Beed on Exh. 20 in R.C.S. No. 548/2012. The application was filed by present respondents, defendants of the suit for granting permission to file written statement. As it was filed after expiry of 90 days, period fixed in Order VIII, Rule 1 of Civil Procedure Code (C.P.C.), the Trial Court Judge allowed the application subject to payment of cost of Rs.1100/-.

2. The learned counsel for petitioners, plaintiffs submitted that in the aforesaid provision of C.P.C., the discretion given to the Trial Court Judge is limited for particular period, the period of 90 days and beyond that the Court is not expected to

grant permission to file the written statement. On this point, he placed reliance on some observations made by the learned Single Judge of this Court at Nagpur Bench which is reported as **2006 (5) Bom.C.R. 796 [Pundlik Laxman Kawarse and Anr. Vs. Baban Pundlik Kawarese & Ors.]**.

3. It is settled position of law that in extraordinary circumstances, the permission can be granted even when the written statement is filed beyond the period of 90 days and it is laid down that the provision is directory in nature and not mandatory in nature. The learned Judge of the Trial Court has referred the case of Bombay High Court on this point for allowing the application. As the provision is directory in nature and matter involves use of discretion, this Court holds that it is not possible to interfere in such order in the proceeding like present one.

4. The submissions made show that the application filed by the plaintiffs for temporary injunction came to be rejected after considering the defence taken by the defendants. The submissions made also show that the plaintiffs have adduced evidence and they have virtually closed the evidence

and tomorrow is the last date for adducing the remaining evidence. In view of these circumstances, this Court holds that it is not desirable to interfere in the decision. The suit is filed for injunction simplicitor. In the result, the proceedings stands dismissed.

[T.V. NALAWADE, J.]

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