

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1687/2019

Sanjay S/o Satyanarayan Lohia
..VS..
Sau. Vimal W/o Tukaram Dhagekar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.R. Tekade, Advocate for the petitioner

CORAM : Z.A.HAQ, J.
DATED : 05/03/2019

Heard.

The respondent has filed civil suit against the petitioner praying for decree for eviction and other ancillary reliefs. As the defendant failed to file the written statement within the prescribed period, the trial Court had passed an order on 05/02/2015 directing that the civil suit to proceed without written statement of the defendant. After 05/02/2015, the defendant had filed various applications including an application under Order 7 Rule 11 of the Code of Civil Procedure praying that the plaint be rejected. Then in November 2018, the defendant filed the application (Exh. 94) seeking permission to file the written statement and alongwith this application, the written statement is also filed. This application (Exh. 94) is dismissed by the trial Court by the impugned order. The learned trial Judge has observed that inspite of several opportunities, the defendant has failed to file the written statement. The facts recorded in para no. 9 of the impugned order show that the defendant has intentionally not filed the written statement and has attempted to protract the matter by filing miscellaneous applications.

The learned advocate for the petitioner – defendant has submitted that the written statement was not filed as negotiations were going on between the defendant and husband of the plaintiff, and the defendant was under the belief that the matter would be amicably worked out, however, the husband of the plaintiff died in 2018, and then the defendant has filed the application (Exh. 94) alongwith the written statement.

The explanation given by the defendant cannot be accepted. The defendant has not placed any material on record to substantiate that negotiations were going on between the defendant and husband of the plaintiff. I find that the explanation given by the defendant for not filing the written statement for about 4 years is contrary to the facts recorded in para no. 9 of the impugned order, and conduct of the defendant.

The learned trial Judge has properly appreciated the facts and has rightly rejected the application (Exh. 94). It cannot be said that the learned trial Judge has committed any illegality or error of jurisdiction which necessitates interference by this Court in the extra-ordinary jurisdiction.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari