

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

Writ Petition No.1383 of 2018

**(Ashok Dharmaji Govardipe and another .vs. Smt. Geetabai wd/o Babarao
Mahakulkar and ors.)**

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

Mr. R.D. Bhuibhar, Advocate for Petitioners.

Mr. A.A. Dhawas, Advocate for Respondent Nos. 1 to 3.

CORAM : Manish Pitale, J.

DATED : March 12, 2019.

Heard learned counsel for the parties.

2. By this writ petition, the petitioners (original plaintiffs) have challenged order dated 05.02.2018 passed by the Court of Civil Judge, Junior Division, Vani (trial Court), on application (Exh.22) filed on behalf of the respondents (original defendants) allowing the said application by setting aside earlier order to proceed without written statement of the respondents and granting permission to place the written statement on record.

3. It is the case of the petitioners that despite repeated opportunities granted to the respondents, they had failed to file the written statement due to which on 24.10.2016, the trial Court had passed an order to proceed without written statement of the respondents. The respondents moved an application on 21.11.2016 for permission to file written statement, but the same

was rejected by order dated 05.06.2017 on the ground that the earlier order dated 24.10.2016 was not recalled by the Court and in the face of the said order, the subsequent application filed by the respondents could not be entertained.

4. In these circumstances, the respondents filed the aforesaid application (Exh.22) for reviewing and setting aside of the orders dated 24.10.2016 and 05.06.2017 and to permit written statement of the respondents to be taken on record.

5. The trial Court in the impugned order has considered the position of law and although it is found that the respondents had delayed filing of written statement, it was recorded that the suit filed by the petitioners was for cancellation and declaration in respect of an agreement to sale dated 20.06.1983 and that denial of opportunity to the respondents to file written statement would cause grave prejudice and irreparable loss to them, while the petitioners would not be prejudiced in any specific manner if the application filed by the respondents was allowed. The trial Court took into consideration the facts of the present case and allowed the application subject to the respondents paying costs of Rs.3000/- to the petitioners. It is informed by the learned counsel for the respondents that the said amount of costs has been deposited by the respondents.

6. This Court is of the view that the approach

adopted by the trial Court in the peculiar facts and circumstances of the present case cannot be said to be erroneous and that a case for exercising writ jurisdiction in their favour has not been made out by the petitioners in the present case.

7. In view of the above, the writ petition is dismissed.

JUDGE

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