

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 2242 OF 2018**

**(Mahendra S/o Namdeorao Rahate Vs. Bhaurao S/o Shrawnji Jamankar & Ors.)**

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

Court's or Judge's orders.

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Shri S.K. Bhoyar, Advocate for the petitioner.

**CORAM : A.S. CHANDURKAR, J.**

**DATE : 28TH JUNE, 2019.**

1. The respondents have been duly served with the notice for final disposal but they have not chosen to contest the writ petition. Learned counsel for the petitioner has been heard at length.

2. Challenge in the present writ petition is the order passed below Exh.19, whereby the trial Court has rejected the application filed by the petitioner-defendant seeking permission to file his written statement on record.

3. The respondents have filed a suit seeking cancellation of sale-deed dated 8th November, 2011 executed in favour of the petitioner. After being served with the suit summons, the petitioner failed to file written statement within a period of 90 days. As

a result no written statement order came to be passed. Thereafter on 25th January, 2018, the petitioner moved the present application alongwith his written statement. The trial Court rejected the said application on the ground that no 7/12 extract was placed on record by the petitioner to indicate that he was busy in cultivation work and hence he could not file the written statement.

4. Heard learned counsel for the petitioner. On perusing the documents on record, it can be seen that in the suit as filed, a challenge has been raised to the sale-deed executed in favour of the petitioner. Though there was a delay on the part of the petitioner in filing his written statement, he had explained the same by stating that he was busy in agricultural work. The application was supported by affidavit and in absence of any other contrary material that reason ought to have been accepted by the trial Court. At the most, the trial Court could have imposed some costs upon the petitioner for the delay as caused. It was not necessary to insist of filing of a 7/12 extract on record. On that ground, the impugned order is liable to be set aside.

5. Accordingly, order passed below Exh.19 dated 7th February, 2019 is set aside subject to the

petitioner paying costs of Rs.1000/- to each of the plaintiffs. Written Statement filed by the petitioner be taken on record subject to paying total costs of Rs.3000/- as aforesaid within four weeks. The trial Court shall proceed with the adjudication of the suit from that stage.

6. The Writ Petition is allowed in aforesaid terms.

**JUDGE**

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