

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3342/2017

(SUBHASH DASHRATH MESHAM VERSUS SUNDARABAI GULABRAO WADWE & OTHERS)

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

Court's or Judge's orders

 Shri H.N. Potbhare, Advocate h/f Shri Y.B. Mandpe, counsel for petitioner.
 Shri M.R. Joharapurkar, counsel for respondents.

CORAM : A.S. CHANDURKAR, J.

DATE : MARCH 25, 2019.

The petitioner is the original defendant who is aggrieved by the order passed by the trial Court below Exhibit 14 rejecting the prayer made for setting aside the 'No Written Statement' order and for permission to file written statement on record. The said order has been confirmed by the Revisional Court on 02.02.2016.

In the suit filed by the respondent for eviction, the defendant appeared before the Court on 03.07.2013 and sought time to file his written statement. The same was not filed on expiry of ninety days period. The plaintiffs thereafter filed their affidavit in lieu of evidence and thereafter on 07.02.2014, the defendant filed the aforesaid application seeking permission to file the written statement. In that application, it was stated that the defendant was a poor and illiterate person and as time was consumed in collecting documents to file written statement, it could not be filed earlier. Though the written statement was ready on 18.12.2013, the same could not be filed on said date. The only reason given was that the defendant's wife had suffered an injury and the defendant had therefore to attend to his wife. The trial Court while considering

said application found that sufficient time was given to the defendant to file his written statement. The written statement was not filed even with the application below Exhibit 14 and therefore in absence of any sufficient cause, the application was rejected. The Revisional Court has confirmed that order by observing that the proceedings were being unnecessarily delayed.

Shri H.N. Potbhare, learned counsel for the petitioner submitted that the reasons given in the application below Exhibit 14 ought to have been accepted by the Courts. The plaintiffs had no cause of action to seek eviction of the petitioner and it was therefore necessary that the proceedings be contested on merits.

On the other hand, Shri M.R. Joharapurkar, learned counsel for the respondent supported the impugned order. He referred to the observations made in the order passed by the Revisional Court indicating the conduct of the defendant. The bona fides of the defendants were not apparent as the application below Exhibit 14 was not accompanied with the written statement.

After hearing the learned counsel for the parties, it is seen that the trial court had granted sufficient opportunity to the defendant to file his written statement. The period of delay after ninety days was not satisfactorily explained. In the application below Exhibit 14 merely stating that the defendant was a poor person was not found sufficient. There was also no document to indicate injuries suffered by his wife so as to prevent filing of the written statement. Admittedly, the written statement was not tendered alongwith the application at Exhibit 14. Though the defendant submits that a contest on merits is necessary, the defendant himself is to blame for finding himself in the present situation. The Revisional Court has also considered the matter in detail and has not accepted the reasons given by the defendant.

Thus in absence of any jurisdictional error, I do not find any reason to interfere with the impugned order. The Writ Petition is therefore dismissed. No costs.

JUDGE

APTE