

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

Writ Petition No.1019/2018

(Sou. Sushama w/o Sudharkarrao Bhalerao Vs. Nagpur Improvement Trust, Nagpur.)

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

Court's or Judge's orders.

Mr. A.S.Bhalerao, Advocate for the petitioner.
 Mr. R.O.Chhabra, Advocate for the respondent.

CORAM : Manish Pitale, J.
DATED : March 13, 2019.

By this writ petition, the petitioner (original plaintiff) has challenged the orders dated 27.01.2016 and 16.07.2016 passed by the Court of Joint Civil Judge, Senior Division, Nagpur (Trial Court), whereby the Trial Court has allowed an application setting aside *ex parte* order and thereafter permitted the respondent (defendant) to file written statement on record.

2. The main contention raised on behalf of the petitioner is that the Trial Court ought not to have shown leniency in favour of the respondent because there was admittedly delay of about 100 days after the mandatory period of 90 days to file written statement had expired. It is contended that sufficient cause was not shown by the respondent for having failed to file the written statement. It is also pointed out that the Trial Court had proceeded *ex parte* against the respondent but, thereafter by the impugned order dated 27.01.2016, the said order has been set aside only on imposition of costs of Rs.1000/-.

3. A perusal of the impugned orders shows that

the orders were passed in the year 2016 in January and July and the petitioner chose to challenge the same by filing this writ petition on 21.12.2017.

4. In view of the aforesaid facts and also fact that the Trial Court permitted the respondent to file written statement on record and the written statement is actually placed on record, this Court refuses to exercise its writ jurisdiction to interfere in the impugned orders. It would be in the interest of justice that the parties to the lis fight out their case on merits and the Trial Court renders judgment on merits of the case. The impugned order dated 16.07.2016 does show that the permission to file written statement is granted belatedly by the Trial Court, without considering the inconvenience caused to the petitioner and the aspect of the payment of costs to mitigate such inconvenience. In these circumstances, the respondent is directed to pay costs of Rs.5000/- (Rs.Five thousand only) to the petitioner as a condition precedent for upholding the impugned order dated 16.07.2016. The said amount of costs shall be deposited by the respondent within a period of six weeks from today.

5. In view of the above, the impugned orders do not call for any interference and the writ petition stands dismissed.

JUDGE