

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

930 APPEAL FROM ORDER NO.10 OF 2017  
WITH  
CIVIL APPLICATION NO. 1109 OF 2017

YOUSUF MOHAMAD SAUDAGAR

... Appellant  
(Orig. Plaintiff)

**VERSUS**

SHAIKH AZIZ ISMAIL MASTER

... Respondent  
(Orig. Defendant)

...  
Mr. Anil S. Bajaj & Mr.H.A. Bajaj, Advocate for Appellant  
Mr. Ankush N. Nagargoje, Advocate for Respondent  
...

**CORAM : V. K. JADHAV, J.**  
**DATED : 18<sup>th</sup> February, 2020**

**PER COURT :-**

1. Heard finally with consent of the parties at the admission stage.
2. The appellant is an original plaintiff. The appellant has instituted Regular Civil Suit No.329 of 2005 for recovery of possession and mesne profit. The respondent - defendant has failed to file written statement within time and his application Exhibit-17 filed for setting aside the 'No WS' order also came to be rejected by the trial Court. By judgment and order dated 29.12.2008, the Joint Civil Judge, Junior Division, Sangamner

has decreed the Regular Civil Suit No.329 of 2005 with costs and thereby directed the respondent - defendant to deliver the vacant possession of suit property and along with certain directions in respect of mesne property.

3. Being aggrieved by the same, the respondent – original defendant has preferred the Regular Civil Appeal No.10 of 2009 before the District Judge -1 Sangamner. After hearing of both the parties, by judgment and order dated 23.11.2016, the learned District Judge-1, Sangamner, Ahmednagar allowed the appeal and quashed and set aside the decree dated 29.12.2008 passed by the trial Court and the matter remanded back to the trial court for reconsideration on its own merits, with the direction that the trial Court to re-admit the suit on its original number and accept the written statement filed by the respondent - defendant on record with application Exhibit-17 on payment of costs of Rs.5000/-, along with some other directions, to dispose of the suit in time bound manner. Hence this appeal against the order of remand has been preferred.

4. Learned counsel for the appellant - original plaintiff submits that in response to the suit summons, the respondent-defendant has appeared in the suit on 08.12.2005 and thrice

sought time to file the written statement, however, he has not filed the written statement. On 31.10.2006, the trial Court has passed the order that the suit to proceed without written statement of respondent-defendant. Thereafter, on 02.01.2007, the respondent-defendant filed the written statement along with application Exhibit-17 for setting aside the 'No WS' order. On 19.01.2007, the trial Court has rejected the said application. Learned counsel submits that there is an inordinate delay in filing the written statement and even there is delay in filing the written statement after the 'No WS' order finally came to be passed by the trial Court. The respondent – defendant has failed to assign any cogent reason for filing the written statement belatedly. Learned counsel submits that though the provisions of Order 8 Rule 1 of the Civil Procedure Code directory in nature, in exceptional situation the Court can condone the delay and accept the written statement after 90 days. In the instant case, no such exceptional situation has brought to the notice of the Court vide application Exhibit-17 and even then, the first appellate court has remanded the matter to the trial Court.

5. Learned counsel for the appellant in order to substantiate his contention placed reliance on the following cases;

(I) **Sudhirkumar Krishnalal Sahani Vs. Nagar Parishad/Nagar Palika/Municipal Council, Hinganghat & Anr.** Reported in 2009 (5) ALL MR 132

(II) **Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and Ors.** reported in (2006) 1 SCC 46

6. Learned counsel for respondent – original defendant submits that on 31.10.2006, the trial Court has passed the 'No WS' order and thereafter, on 01.01.2007, the respondent - defendant filed the written statement along with application Exhibit-17 for setting aside the 'No WS' order. It has been specifically contended in the said application Exhibit-17 that the written statement could not be filed within time due to want of certified copies of old sale deed and specific instructions. The first appellate court has accepted the said reasons as an exceptional situation and remanded the matter since the disputes pertains to the immovable property.

7. On going through the impugned order passed by the learned District Judge-1 Sangamner in Regular Civil Appeal No.10 of 2009 and so also the judgment and decree passed by the trial Court and the order passed below Exhibit-17, it appears that the respondent - defendant has assigned certain reasons such as want of certified copies of old sale deed and

certain instructions, the written statement could not be filed within time. The provisions of Order 8 Rule 1 of the Civil Procedure Code, time and again held to be directory in nature. It is true that in exceptional circumstances, the Court can condone the delay and accept the written statement after 90 days. In the instant case, in the certain exceptional circumstances such as non receipt of certain documents so also instructions and application Exhibit-17 came to be filed way back in the year 2007. It further appears that by judgment dated 29.12.2008, trial Court has decreed the suit and thereafter, the learned District Judge-1 has allowed the Regular Civil Appeal preferred by the respondent – original defendant and on 23.11.2016, remanded back the matter to the trial Court for trial afresh. Even thereafter, this appeal against order remained pending before this Court for more than three and half years. Thus, considering entire aspects of the case, I am not inclined to interfere in the impugned judgment and order passed by the District Judge-1, Sangamner, Ahmednagar. The learned District Judge has also imposed the costs for accepting the written statement vide application Exhibit-17 and further given directions to the trial Court to decide the suit within six months from the receipt of the order. It further appears from the judgment and order passed by the District Judge that certain observations have

been made touching to the merits of the case. The trial Court shall dispose of the suit uninfluenced by the said observations made by the District Judge, on its own merits. The trial Court shall follow the condition as directed by the first appellate court while disposing of the suit from the date of receipt of this order. Hence, I proceed to pass the following order:

**ORDER**

(I) The Appeal from Order is hereby dismissed.

(II) In view of dismissal of the appeal, pending civil application is disposed off.

**(V. K. JADHAV, J.)**

Sam..