

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

WRIT PETITION NO.6832/2016

Sau. Kalpana W/o Ravindra Jakate

..V/s..

Ravindra S/o Gulabrao Jakate

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

Court's or Judge's orders

Shri C.A. Joshi, Advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATED : 6.1.2020.

1] The petitioner - wife is aggrieved by the 'no written statement' order dated 11.6.2015 passed by the trial Court. She had preferred proceedings seeking divorce, registered as Petition No.A-128/2014. The respondent husband preferred a counter claim and sought divorce. By a pursis below Exh.37, the petitioner withdrew her proceedings and the counter claim filed by the husband continued as an independent suit.

2] The petitioner moved application (Exh.22) on 24.8.2015 praying to the trial Court to recall the no written statement order and permit the petitioner to file the written statement in the counter claim filed by the husband. By order dated 26.2.2016, the trial Court rejected the Exh.22 as it was not accompanied by the written statement of the petitioner.

3] In view of the above order, the petitioner moved an application (Exh.45) on 4.8.2016 once again

praying for recalling of the no written statement order. She filed her written statement along with the said application. It was pointed out that the father of the petitioner had passed away. Her Advocate was also changed. Thus, in this backdrop, she could not pay due attention to the proceedings and that led to the no written statement order.

4] The petitioner is, therefore, aggrieved by the order dated 7.10.2016 by which the Family Court has rejected Exh.45 on the ground that Exh.22 was earlier rejected. No orders have been passed on the sufficiency of the reasons in respect of the prayer for recalling the no written statement order.

5] The learned Advocate for the respondent is absent.

6] By an *ex parte ad interim* order dated 6.12.2016, this Court had granted interim relief to the petitioner and had stayed the pending proceedings before the learned Family Court.

7] I find that the petitioner appears to be negligent and has also suffered a personal tragedy. She has lost her father. She has also appointed a new Advocate. In this situation, the no written statement order was passed on 11.6.2015. She filed Exh.22 within two months and two weeks. Inadvertently, the written

statement was not accompanying Exh.22. I find that the petitioner should have been advised by her legal representative that in such matters, an application praying for recalling of the no written statement order should also be accompanied with the written statement. Exhibit 22 has therefore been rejected in peculiar facts and circumstances.

8] In my view, this cannot be an impediment for entertaining Exh.45 which application was accompanied by a written statement filed by the defendant on 4.8.2016. More than three years and six months have lapsed and ends of justice would be met by imposing costs upon the petitioner and the written statement can be taken on record, lest she would suffer an irreparable harm and serious prejudice while contesting the claim of divorce filed by the husband.

9] As such, this petition is **allowed**. No written statement order dated 11.6.2015 and the order dated 7.10.2016 stand quashed and set aside. Application Exh.45 stands allowed. By way of costs, the petitioner would be deprived of maintenance for a period of two months and the respondent husband therefore, need not pay her the maintenance for the months of February and March, 2020.

(RAVINDRA V. GHUGE, J.)