

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

WRIT PETITION NO.612 OF 2021

Ashok s/o Bhausahab Sangle,
Age : 57 years, Occ: Agriculturist,
R/o: Changdev Nagar, Puntamba,
Tq. Rahata, Dist. Ahmednagar.

... **PETITIONER**
(Org. Defendant)

VERSUS

1. Smt. Bhamabai Trimbak Dhanwate,
Age : 65 years, Occ: Agriculturist,
R/o: Puntamba, Tq. Rahata,
Dist. Ahmednagar.
2. Bhausahab Trimbak Dhanwate
Age : 50 years, Occ: Agriculturist,
R/o: Puntamba, Tq. Rahata,
Dist. Ahmednagar.
3. Smt. Shobha Nivrutti Dhanwate,
Age : 47 years, Occ: Agriculturist,
R/o: Puntamba, Tq. Rahata,
Dist. Ahmednagar.
4. Smt. Alka Daulat Phopse,
Age : 51 years, Occ: Agriculturist,
R/o: Puntamba, Tq. Rahata,
Dist. Ahmednagar.
5. Kamal Popat Kadu,
Age : 48 years, Occ: Agriculturist,
R/o: Puntamba, Tq. Rahata,
Dist. Ahmednagar.
6. Bhaskar Trimbak Dhanwate,
Age : 41 years, Occ: Agriculturist,
R/o: Puntamba, Tq. Rahata,
Dist. Ahmednagar.
7. Narayan Trimbak Dhanwate,
Age : 39 years, Occ: Agriculturist,
R/o: Puntamba, Tq. Rahata,
Dist. Ahmednagar.
8. Sau. Bharati Milind Shete,
Age : 31 years, Occ: Household,
R/o: Marina C 504, Casa Rio, Palava,
Dombivali East, 421204
Mumbai.
9. Sau. Aarti Arun Chavhan,

Age : 31 years, Occ: Household,
R/o: K 21/4, N11, Navjeevan Colony
Near Hadco Corner, behind Om Balak
Vidya Mandir, Aurangabad – 431001.

10. Yogita Nivrutti Dhanwate,
Age : 25 years, Occ: Education,
R/o: Changdevnagar, Jalgaon Road,
(Near Shinde Vasti) (Puntamba),
Tq. Rahata, Dist. Ahmednagar.

... RESPONDENTS
(Org. Plaintiffs)

...
Advocate for Petitioner : Mr. Rahul B. Temak
Advocate for Respondents : Mrs. Rashmi S. Kulkarni
...

CORAM : MANGESH S. PATIL, J.

DATE : 27.08.2021

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner is the original defendant aggrieved by the rejection of his application to place on record his written statement when the Suit was fixed for arguments.

3. The learned advocate for the petitioner would submit that the dispute in the Suit touches right to immovable property. There was no reason for him to protract the decision. The old record concerning the Suit property of the year 1982 was to be traced. Sufficient information could not be gathered to draft a written statement and besides he was also ill between the time he put the appearance and the order to proceed without

appearance was passed. All this has led to the delay in filing the Written Statement. The cause was sufficient and in the interest of justice it ought to have been condoned and the petitioner should have been allowed to file written statement so that the matter could have been decided on merits rather than by default.

4. The learned advocate for the respondents would submit that the petitioner has been remiss in defending the Suit. He had appeared in the Suit on 28.07.2016 and the impugned order was passed on 27.01.2017. The Application is vague and unsupported by any material to substantiate the grounds being put forth. Even after passing the impugned order, it is on 16.08.2017 that the respondents had filed affidavit in lieu of their examination-in-chief, still, the petitioner never appeared. A specific order was passed to the effect that there would be no cross-examination on behalf of the petitioner. It is after a long slumber that on 05.07.2018 the present Application (Exhibit-15) was filed which has been rejected for sound reasons.

5. The learned advocate for the respondent would further submit that though the time limit fixed in Order XVIII Rule 1 of the Civil Procedure Code for filing a Written Statement is not rigid and in an appropriate case the Written Statement can be allowed to be filed even beyond that time, there has to be sound reasons and acceptable justification demonstrating as to what had prevented the defendant from filing the Written Statement in time. She would submit that the Application itself was vague and the

learned Judge having noticed all these facts and circumstances has rightly rejected the Application. There is no illegality.

6. True it is that the provision contained in Order VIII Rule 1 of the Civil Procedure Code providing for a time line for filing a written statement is directory and not mandatory. However, simultaneously, it is expected that there is some plausible explanation sufficient to overlook the delay occasioned in filing the Written Statement. Bearing in mind this principle if one examines the Application of the petitioner, he has come out with a reason that he was ill as one of the causes which prevented him from filing the Written Statement in time, but no medical certificate was annexed with his application to substantiate this ground.

7. As a second ground, though it has been averred that since the record was pertaining to the year 1982 there were some difficulty for the petitioner to collect it so as to draft a written statement. Again, there is no material to substantiate even this ground.

8. It is indeed trite that procedure is considered to be hand maid of justice but then, simultaneously one cannot permit a party to misuse the process of law. As has been pointed out in the affidavit-in-reply and mentioned herein above the petitioner has been remiss at every stage of the litigation. In spite of having put in appearance on 28.07.2016 he failed to first file a written statement and even thereafter was not present to cross-examine the respondent's witness. When the matter was about to be closed for argument that he has filed the present Application.

9. The grounds apart from being unsubstantiated are spacious and vague. Since the petitioner has availed of an opportunity to contest the Suit but has failed to do that no fault can be found with the impugned order rejecting his Application (Exhibit-15). The grounds given by the learned Judge in the impugned are sound. There is no merit in the Writ petition.

10. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

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