

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

WRIT PETITION NO. 1248/2020

Savita Wasudeo Ingle and ors...Versus...Yashwant Manaji Gavai

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

Court's or Judge's orders

Mr. U.J.Deshpande, Advocate for petitioner
Mr. D.S.Patil, Advocate for Respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 09/12/2021

Heard Mr. Deshpande, learned counsel for the petitioner.

The petition challenges the order dated 01.10.2020 passed below Exh. 28 and 35, allowing them, whereby the written statement filed by the defendant, has been rejected.

Mr. Deshpande, learned counsel for the defendant/petitioner submits that the defendant was served on 02.11.2013, the returnable date being 07.02.2014 and on the first date of appearance itself, an application under Order 7 Rule 11 of CPC for rejection of the plaint came to be filed, which was rejected on 28.11.2017, challenge to which laid in a Civil Revision Application, came to be rejected on 28.08.2019. He therefore submits that the written statement placed on record on 16.11.2019 was within the time frame as required by Order 8 Rule 1 of CPC. Reliance is placed on **Nandalal Vitthaldas and Co. vrs. APMC, Shegaon;**

2006 (1) Mh LJ 128. It is therefore submitted that the applications for rejection of the written statement at Exh. 28 and 35 ought not to have been allowed by the learned Trial Court.

Mr. Patil, learned counsel for the Respondent/plaintiff submits that the written statement has been filed after a period of 1600 days from the date of service excluding the period for which the stay was operating and therefore, he justifies the impugned order.

The position has already been considered by this Court in **Nandalal Vitthaldas** (supra) which holds that the written statement filed within the stipulated period upon rejection of the application under Order 7 Rule 11 of CPC would be considered to be within time and looking to the dates enumerated above, it has been so filed, considering which the impugned order cannot be sustained, the same is therefore quashed and set aside. The applications at Exh. 28 and 35 are rejected and the written statement filed by the Defendant is taken on record.

The petition is accordingly allowed in above terms. No costs.

JUDGE

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