

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****WRIT PETITION NO. 1465 OF 2021**

(Sahil Omprakash Daga and another vs. Satish Shankarlal Rath)

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

Court's or Judge's Orders.

Mr. R. J. Mirza, Advocate for petitioner.
Mr. N. B. Kalwaghe, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 25/08/2021

By this writ petition, the petitioners (original defendants) have challenged orders dated 07/12/2020, passed below Exhibits 14 and 17 by the Court of Civil Judge, Senior Division, Akola, as also order dated 06/01/2021, passed below Exhibits 21 and 23.

2. The respondent has filed a suit for recovery against the petitioners herein. The Court below issued summons and upon finding that the petitioners were deliberately seeking to avoid the process of the Court, passed an order on 14/02/2020, directing that the matter shall proceed ex-parte.

3. The petitioners filed two separate applications at Exhibits 14 and 17 for setting aside the aforesaid order. By the impugned orders dated 07/12/2020 passed on the aforesaid applications, the Court below rejected the applications only on the ground that the said applications were not accompanied by written statement.

4. The petitioners filed review applications at Exhibits 21 and 23, contending that there is no provision of law mandating that such applications for setting aside ex-parte orders are necessarily required to be accompanied by written statement. It was contended that the petitioners had also filed applications for direction to the respondent to supply the suit and accompanying documents and that the written statement could be prepared only after the said copies were served on the petitioners. By the impugned order dated 06/01/2021, the Court below has rejected the review applications also.

5. The learned counsel appearing for the petitioners reiterated the contention that there is no provision of law mandating that written statement must accompany such applications for setting aside ex-parte order. The learned counsel appearing for the respondent has not disputed the said proposition.

Yet, it is pointed that the petitioners in the present case were deliberately trying to avoid the process of the Court and that this was evident from the fact that they had received legal notices on the very same address while they were avoiding summons issued by the Court on such address.

6. The learned counsel for the petitioner invited attention of this Court to the replies filed to the said applications at Exhibits 14 and 17 on behalf of the respondents, wherein it was stated that cost must be imposed upon the petitioners for the harassment caused to the respondent.

7. This Court is of the opinion that the impugned orders cannot be sustained for the reason that there is no provision in law mandating that the petitioners ought to have filed written statement along with applications for setting aside ex-parte orders. The Court below also erred in rejecting the review applications.

8. Therefore, the writ petition can be allowed. But, at the same time, the respondent needs to be adequately compensated for the inconvenience suffered due to the approach of the petitioners. It cannot be said that the impression gathered by the

Court below about the petitioners trying to avoid the process of the Court can be said to be erroneous.

9. Therefore, the writ petition is allowed. The impugned orders are quashed and set aside.

10. Accordingly, the applications at Exhibits 14 and 17 are allowed in terms of the prayers made therein, subject to the petitioners paying costs of Rs.20,000/-[Rupees Twenty Thousand only] to the respondent herein within a period of **two weeks** from today. The amount of costs shall be deposited before the Court below within the stipulated period of time, and the respondent shall be at liberty to withdraw the the said amount.

11. Considering that in the present case the respondent filed a suit for recovery of amount in the year 2019, the Court below is directed to expedite the proceedings and to dispose of the same, preferably within a period of **one year** from today.

JUDGE