

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

**WRIT PETITION NO.3356 OF 2021**

Sau. Manisha w/o Shankarrao Balvir and others

Vs.

Meghnath s/o Namdeo Thelkar and another

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

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Mr. G. N. Khanzode, Advocate for petitioners.

**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 22/09/2021**

Heard Mr. Khanzode, learned Counsel for the petitioners, who challenges the impugned order dated 18.12.2019 passed by the learned Trial Court whereby the defendant Nos.1 and 2, have been permitted to file the written statement.

2. He submits by relying upon the Judgment in the case of **M/s. SCG Contracts India Pvt. Ltd. Vs. K. S. Chamankar Infrastructure Pvt. Ltd and others, AIR 2019 SC 2691**, that the mere pendency of an application under Order 7 Rule 11 of the Code of Civil Procedure (CPC) would not be a reason or cause for not filing written statement within the time as permitted by Order 8 Rule 1, and therefore, the impugned order is liable to be quashed and set aside.

3. A perusal of the impugned order would indicate, that an application under Order 7 Rule 11 of CPC was filed by the defendant Nos.1 and 2, on the ground that the claim in the suit was under valued. This

application was accepted by the Court on 24.1.2013, whereby the plaintiff was directed to properly value claim in the suit and deposit the Court fee thereupon. This order was challenged by the plaintiff, in Writ Petition No.1216 of 2013 which remanded the matter back to the Trial Court with a direction to frame a preliminary issue regarding the valuation of the suit claim. The learned Trial Court accordingly framed the preliminary issue and permitted the parties to lead evidence, whereupon by order dated 13.4.2016, the plaintiff was directed to make the proper valuation and deposit requisite Court fee. Being aggrieved by order dated 13.4.2016, the plaintiff again filed Writ Petition No.6424 of 2016, which came to be dismissed on 16.10.2018. Thereafter, the plaintiff made the correct valuation and deposited the Court fee on 16.11.2018. An application, thereafter, was filed on 13.8.2019 by the defendants along with the written statement with a request to place the same on record, which has been accepted.

4. It is always necessary for a lis to be decided on merits and not in default. The suit which is filed by the plaintiff is for partition and separate possession, in view of which, the stand of the defendants is necessary to be permitted to place on record in order for there to be a decision on merits. The import of Order 8 Rule 1 of CPC is merely to ensure the speedy trial of the matter and not to decide matter in default, on failure of the defendants to place on record the written statement.

5. In the instant matter, as indicated above, the application under Order 7 Rule 11 of CPC filed by the defendants was accepted and the plaintiff was asked the correct valuation and pay the proper Court fee, any non compliance with this order would have naturally resulted in the suit being dismissed under the provisions of Order 7 Rule 11 (b) of CPC, in which case there was no question of written statement being placed on record.

6. The Judgment in **M/s. SCG Contracts India Pvt. Ltd.** (supra) has been rendered in a suit under the Commercial Courts Act, whereby by way of the amendment to the CPC as applicable to the suits under the Commercial Courts Act, the rigor of law has been enhanced. The same position, however, cannot be applied to the suit governed by the regular CPC where some leeway has to be granted to the parties for the purpose of deciding the suit on merits.

7. In that view of the matter, I do not see any infirmity with the impugned order. The petition is without any merits and accordingly dismissed. No costs.

**JUDGE**