

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

WRIT PETITION NO. 7364/2018

**Raju @ Pradip Bhimrao Ronghe...Versus...Dipak Navinchandra Kothari and
ors**

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

Court's or Judge's orders

Mr. P.A.Kadu, Advocate for petitioner

Mr. Alok Daga, Advocate for respondent nos.1 to 3

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/12/2021

Heard Mr. Kadu, learned counsel for the petitioner and Mr. Daga, learned counsel for respondents.

The petition challenges the order dated 15.10.2018 below Exh. 112, whereby the application for amendment of written statement as filed by the defendant came to be rejected on the ground that there is inordinate unexplained delay of 7 years.

Mr. Kadu, learned counsel for the petitioner submits that on 30.10.2014 defence was struck off, which order was set aside on 31.07.2018 and as such there was no reason whatsoever for taking this period into consideration while computing the so called delay. For the reason that the written statement was not on record itself, due to which no amendment application could have been filed, and it is only after the order dated 31.07.2018 was passed that the written statement was restored back on file

that the occasion arose for filing of an application for amendment, which came to be filed on 06.10.2018 itself along with an application for framing issues. It is thus submitted that the application for amendment was filed, when the issues were not even framed. He submits that the impugned order overlooks this position and therefore is factually incorrect.

Mr. Daga, learned counsel for the respondents vehemently opposes the petition and contends that the entire attempt is to prolong the litigation.

My attention is invited to order dated 31.07.2018 passed in W.P. No. 5131/2017 by this court whereby the trial was directed to be completed within a period of two months from the date of the said order, which has not been done.

It is however material to note that the period as directed by the order dated 31.07.2018 as passed in W.P. No. 5131 of 2017 is long over. The cause for filing the application for written statement arose only on 31.07.2018 on which date the earlier order striking of the defence was set aside and the application for amendment has been filed immediately thereafter on 06.10.2018, on which date the issues were also not framed, considering which position, the impugned order cannot be sustained, the same is therefore quashed and set aside and the

application at Exh. 112 is allowed. The amendment shall be carried out on or before 17.12.2021. In view of the direction as contained in W.P. 5131 of 2017, dated 31.07.2018, the learned trial Court is directed to expeditiously decide the suit within a period of 6 months from 17.12.2021

The defendant/petitioner shall cooperate in the expeditious decision of the suit and any procrastination shall be severally dealt with.

The petition is allowed in above terms. No costs.

JUDGE

rvjalit