

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

WRIT PETITION NO.190 OF 2022

**RADHAKISHAN ALIAS KISAN KANBARAO MHASKE AND OTHERS
VERSUS
SOW. CHATURABAI BHIWAJI JAGTAP**

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Advocate for Petitioners : Mr. Vishal A. Bagal

Advocate for Respondent : Mr. K. S. Sarda

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09th FEBRUARY, 2022

PER COURT :

1. This petition takes exception to the orders dated 17-03-2021 and 20-11-2021, passed by the learned Civil Judge, Senior Division, Nanded, below Exhibit-13 in Special Civil Suit No.11/2020.

2. By the impugned order dated 17-03-2021 the trial Court permitted defendants Nos. 1 to 4 to file their written statement after delay of three months and six days, by imposing cost of Rs.1500/-, to be paid on or before the next date. It is observed in the said order that, if the defendants fail to pay the costs till next date, this order will be automatically vacated. It appears from the record that defendants failed to pay the costs. Therefore, by order dated 20-11-2021, in view of the order dated 17-03-2021 passed below Exhibit-13, the trial Court directed the suit to proceed without written statement of respondent

Nos. 1 to 4.

3. Heard the rival submissions of the learned advocate for petitioners and the learned advocate for respondent.

4. It is the contention of the learned advocate for petitioners – defendants that during the lock-down petitioners could not file written statement within stipulated time. Hence, they filed application Exhibit-13. Taking into consideration the exceptional circumstances which prevented the petitioners to file written statement in stipulated time, the trial Court ought to have accepted the written statement filed by the petitioners – defendants, by condoning the delay. The learned advocate for petitioners further states that, as per his instructions, the learned advocate representing the petitioners – defendants in the trial Court was not aware of this order dated 17-03-2021. Therefore, the costs could not be deposited and there was no further date given.

5. The learned advocate for respondent strenuously opposed prayer of the petitioners contending that it was the duty of the learned advocate for defendants to peruse the order passed on 17-03-2021. According to him, the defendants ought to have filed the written statement within stipulate time.

6. It is not in dispute that the written statement was not filed within stipulated time, which was during the lock-down period. Considering the same, the trial Court allowed the application by imposing cost of Rs.1500/- on the defendants. However, the defendants have failed to deposit the costs. Merely because the cost is not deposited the trial Court was not justified in directing to proceed the suit without written statement of defendants. In the interest of justice, fair opportunity needs to be given to the defendants to contest the suit on merits. In that view of the matter, the impugned orders passed by the trial Court cannot sustain. However, taking into consideration the fact that the defendants have failed to deposit the costs within stipulated time, it is necessary to impose costs on the defendants for non compliance of order dated 17-03-2021. In the result, following order:

ORDER

- (I) Writ petition is allowed in terms of prayer clause 'C'.
- (II) The impugned orders dated 17-03-2021 and 20-11-2021 passed by the learned Civil Judge, Senior Division, Nanded, below Exhibit-13 in Special Civil Suit No.11/2020, are quashed and set aside.

- (III) Written statement of the defendants be accepted on payment of cost of Rs.5,000/- (Rupees Five Thousand Only) by the defendants to the plaintiff in the trial Court.
- (IV) With these directions, the writ petition is disposed off.

(NITIN B. SURYAWANSHI, J.)