

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

**WRIT PETITION NO.752 OF 2018
WITH CA/977/2020 IN WP/752/2018**

**DATTATRAYA NIVRUTTI TIDKE
VERSUS
SHIVDAS NIVRUTTI TIDKE AND OTHERS**

...
Advocate for Petitioner : Mr. T. G. Gaikwad
Advocate for Respondent No.1 : Mr. M. B. Ubale
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 11TH MARCH, 2022

PER COURT :

1. This petition impugns the order dated 25-10-2017, passed by the learned Joint Civil Judge Junior Division, Parali Vaijinath, below Exhibit-46 in R.C.S. No.101/2014, thereby rejecting the application filed by the petitioner for setting aside 'no written statement' order.
2. It is not in dispute that the petitioner filed application seeking setting aside 'no written statement' order after delay of three years. The ground given is that since the petitioner was away from the town in order to earn livelihood he could not file written statement within stipulated time, poor financial condition of the petitioner is also stated to be one of the grounds of delay.
3. The suit is filed for partition and separate possession of the

ancestral property wherein interest of the petitioner is involved. In that view of the matter, though there is an inordinate delay of three years for filing application seeking setting aside 'no written statement' order and seeking permission to file written statement on record, this Court is of the view that reasonable and fair opportunity needs to be given to the petitioner to file written statement and to contest the suit on merits.

4. In that view of the matter, the impugned order is quashed and set aside. The petitioner shall file written statement in the trial Court within a period of two weeks from the date of receipt of this order. The cost deposited by the petitioner, pursuant to the order passed by this Court dated 23-01-2018, shall be paid to the respondents in the trial Court and for that purpose, the petitioner is permitted to withdraw the amount of cost deposited in this Court. With these directions the writ petition is disposed off.

5. Civil Application is also accordingly disposed off.

(NITIN B. SURYAWANSHI, J.)