

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

6 WRIT PETITION NO.10817 OF 2022

**DAMODAR BABURAO AVHAD AND ANOTHER
VERSUS
ASHOK BABURAO AVHAD AND OTHERS**

...
Advocate for Petitioners : Mr. Prashant R. Nangare

...

CORAM : SANDEEP V. MARNE, J.

DATE : 12-12-2022

PER COURT :

. By this petition, petitioners have challenged order dated 07.09.2022 passed by Civil Judge Senior Division, Kopergaon below Exh.147 in Special Civil suit No.34 of 2018 allowing application of defendant nos.1 to 6 for setting aside 'no written statement' order and permitting them to file written-statement on record.

2. Though the summons was served on defendant nos.1 to 6 on 02.11.2018, it appears that complete copies of the plaint were not supplied to them along with the summons. The same was subsequently supplied by plaintiff. There appears to be some controversy about the exact date on which the complete copies of the plaint were so supplied, in that, the trial Court has observed that the same were supplied on 17.12.2018, whereas petitioners claim that

the same were supplied on 01.12.2018. Be that as it may. The written-statement has ultimately been filed on 16.03.2019 along with an application to set aside 'no written statement' order.

3. The learned counsel for petitioners submits that after the time for filing written-statement was over, two applications were filed by defendant nos.1 to 6 seeking extension of time for filing written-statement on 14.02.2019 and 21.02.2019 and both the applications were rejected by the trial Court. He therefore submits that in such a circumstance, the trial Court ought not to have set aside 'no written statement' order.

4. After having heard the learned counsel for petitioners, I am of the view that the delay in filing written-statement is not inordinate. The complete copies of the plaint were supplied to defendants on 01.12.2018 / 17.12.2018 and the written-statement has been filed on 16.03.2019.

5. In **Zolba vs. Keshao & Others, (2008) 4 SCC 769** the Hon'ble Supreme Court has held that the provisions of Order-I, Rule-8 of the Code of Civil Procedure are not mandatory and that the same are directory in nature. I am therefore of the view that the trial Court

has rightly condoned the delay of about 3 months in filing the written-statement. The petition is gross abuse of process of law and the same deserves to be dismissed and it is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

GGP