

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

WRIT PETITION NO.10202 OF 2013

RABANBEE AHMEDSAB SHAIKH

..PETITIONER

VERSUS

**PUTHALABAI YADAVRAO KAMBLE
AND OTHERS**

..RESPONDENTS

...

Mr. G. L. Deshpande, Advocate for the Petitioner.
Mr. S. N. Lale Yelwatkar, Advocate for Respondent
No.1.

...

CORAM : S. V. GANGAPURWALA, J.

DATED : 14th JANUARY, 2022.

PER COURT:-

1. The petitioner is original defendant. The respondent/plaintiff have filed Suit for declaration of the ownership and declaration that decree in R.C.S. No.221/1978 is not binding on her. The petitioner did not file written statement. No written statement order was passed against the petitioner. Subsequently, application was filed for setting aside no written statement order. The said application is rejected. Aggrieved thereby, the present petition.

2. Mr. Deshpande, learned counsel for the petitioner submits that, the petitioner has deposited Rs.10,000/- as directed by this Court under order dated 27.02.2014.

3. The learned counsel for the petitioner submits that, after appearing in the matter, the petitioner went on religious pilgrimage. Thereafter, was suffering from Asthama. He could not contact his advocate and file written statement.

4. The learned counsel for respondent/original plaintiff submits that, the grounds raised by the petitioner are false. No written statement order was passed on 15.06.2011 and after lapse of 1 year and 6 months, application was filed for setting aside no written statement order. The Trial Court has rightly passed the order.

5. The Suit is substantive Suit for declaration of ownership and for further declaration that decree in RCS No.221/1978 is not binding on her. The substantive rights of the parties are involved. The reasons are given by the petitioner. It would be appropriate that, such Suit is decided on merits.

6. The petitioner has also complied with the orders of this Court by depositing Rs.10,000/-.

7. Considering the above, I am inclined to grant one opportunity to the petitioner.

8. The impugned order is quashed and set aside. If the petitioner has not filed written

statement as yet, then the written statement shall be filed within a period of six (06) weeks from today. Failure to file written statement as directed above, would entail rejection of the application below Exhibit-47 filed for setting aside no written statement order. If the written statement is filed as directed, then Suit shall be proceeded further. Considering that the Suit is of the year 2010, the Trial Court shall endeavour to decide the Suit expeditiously.

9. The respondent/original plaintiff is permitted to withdraw Rs.10,000/- deposited by the present petitioner pursuant to the orders of this Court.

10. Writ Petition is disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE