

Digitally signed
by BIPIN
DHARMENDER
PRITHIANI
Date:
2022.06.14
10:42:55
+0530

BIPIN
DHARMENDER
PRITHIANI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 10933 OF 2018

Ravji Mahadev Rane

... Petitioner

Versus

Shri Sandeep Bhiva Rane

... Respondent

Ms. Preeti Walimbe i/by Mr. Bhushan Walimbe for the Petitioner.
None for the Respondent.

**CORAM: ROHIT B. DEO, J.
DATE : 13th JUNE, 2022**

P.C. :-

. The petitioner is the plaintiff in Regular Civil Suit 75 of 2016 which is brought seeking decree of injunction and damages.

2. The defendant failed to file written statement and on 13th February, 2017, the Trial Judge proceeded without written statement. After the plaintiff filed on record affidavit in lieu of examination-in-chief, the defendant preferred an application exhibit 14 seeking permission to file written statement, which application the learned Trial Judge was pleased to allow vide order dated 10th January, 2018. The submission of the learned counsel for the petitioner is that while the provisions of Order VIII Rule 1 are not mandatory, substantial compliance is expected and having proceeded without written statement, the learned Trial Judge could not have permitted defendant to file written statement, at his mere askance. The submission is that

there is absolutely no case made out in the application which would warrant exercise of discretion in favour of the defendant.

3. The respondent-defendant is not represented though he is duly served.

4. I have perused the application in which the failure to file written statement at the appropriate time is justified by general averments that the defendant is an agriculturist, who is not acquainted with Court procedure, and therefore he could not contact and instruct the counsel at the proper stage. This justification is accepted by the learned Trial Judge who further observes that considering nature of the dispute, it would be appropriate if the controversy is decided on merits. The learned Trial Judge imposed cost of Rs.500/- (Rupees Five Hundred only), and directed that Rs.250/- (Rupees Two Hundred and Fifty only) shall be paid to the plaintiff.

5. From a strict legalistic perspective, I have found substance in the submission of the learned counsel that the application seeking permission to file written statement is worded in an ambiguous manner and the pleading is vague, to put it conservatively. However, even if I assume that there is an error committed by the learned Trial Judge in allowing the application and granting permission to the defendant to file written statement, I am not necessarily obligated to interfere in writ jurisdiction. The learned Trial Judge could have erred in exercising discretion, but then the error is within jurisdiction and more importantly there is no gross miscarriage of justice as such which is

likely to cause to the plaintiff. The interest of the plaintiff can be safeguarded by directing the learned Trial Judge to expedite the suit and by modifying the order of imposition of cost.

6. While I am not interfering with the order impugned to the extent permission is granted to the defendant to file the written statement on record, the order is modified and the defendant is directed to pay cost of Rs.5,000/- (Rupees Five Thousand only) to the plaintiff as the pre-condition for the written statement to be accepted on record.

7. The learned Trial Judge shall decide the suit expeditiously, and in any event within the next 18 months.

8. Petition is disposed of.

[ROHIT B. DEO, J.]