

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION 7358 OF 2017

Shri. Balu Nagu Khot and Anr. ..Petitioners

V/s.

Baburao Nagu Khot
(since deceased) through Lrs. and Ors. ..Respondents

Mr. Prashant Kulkarni for the Petitioners.

Mr. Rahul Walvekar i/b S.R. Ganbavale for the Respondents 1A
to 1D.

CORAM : ROHIT B. DEO, J.

DATE : 17 JUNE 2022

P.C.

1. The Petitioners are the Defendants 1 and 24 in Regular Civil Suit 163 of 2008, which is brought for partition.

2. The suit proceeded against Defendants 1 and 24 without written statement. 7 years after “no written statement” order, an application came to be preferred seeking permission to file the written statement on record. The only averment in the said application is that Defendant 1 was assured by Defendant 7 that he would look after his interest in the litigation, which he failed to do. It is contended in the application, that in the year 2015, there was an altercation between the Plaintiff and Defendant 1

during the course of which the Plaintiff told Defendant 1 that he has no concern with the suit property since the suit has already proceeded without written statement. Notably, in the entire application, there is not even a whisper why Defendant 24 could not file the written statement.

3. Be that as it may, the explanation, fragile as the justification is, is not rightly accepted by the learned Trial Judge.

4. While the provision of Order VIII Rule 1 of CPC may be directory, I see no error in the view taken by the learned Trial Judge that there is absolutely no justification pleaded for permission to place on record written statement after 7 years.

5. I do not see any reason to interfere in the order impugned in writ jurisdiction, the petition is dismissed.

(ROHIT B. DEO, J.)