

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

WRIT PETITION NO. 6849 OF 2022

Babu Yeshu Jadhav and ors.

.... Petitioners

v/s.

Bharat Bhaskar Jadhav and ors.

.... Respondents

Mr. Sugandh Deshmukh a/w. Irvin D'Souza for the Petitioners.

Mr. Mujeebuddin a/w. S.K. Arif-ur-Rehman for R.Nos.1 to 4.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 17th AUGUST, 2022.

P. C. :-

. With consent, heard finally at the stage of admission.

2. The Petitioner herein has challenged the order dated 18/04/2022 whereby the learned Civil Judge, Senior Division, Niphad has rejected the Application filed by the Petitioner for extension of time to pay the costs and to permit them to file the written statement.

3. Heard learned counsel for the Petitioners and learned counsel for the Respondents. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The records reveal that the Petitioners had failed to file written

statement though they had put in their appearance on 03/12/2018. They filed an Application to condone the delay in filing the written statement. By order dated 02/12/2019, the learned Judge allowed the said Application subject to payment of costs of Rs.500/- each.

5. The records reveal that the Petitioners failed to pay the costs, as a consequence thereof, no written statement order was confirmed. The Petitioner filed an Application for recall of the said order and sought extension of time to pay the costs and permit them to file the written statement. The Petitioners had alleged that the advocate on record had not informed them about the said order. The learned Judge has disbelieved the said statement.

6. The Hon'ble Supreme Court in the case of ***Kailash v/s. Nanhku and ors. (2005) 4 SCC 480*** has observed that the provisions under Order VIII Rule 1 of CPC is directory and not mandatory. In exceptional situations, the Court has discretion to extend the time beyond the period of 30 days or 90 days. In the instant case, the Petitioners had alleged that the advocate on record did not inform them that they were required to deposit cost of Rs.500/- each. There was no reason to disbelieve the said statement and/or that the reasons

spelt out were not genuine. The records do not indicate that the Petitioners were adopting dilatory tactics. The Trial Court was therefore not justified in taking a rigid view and denying an opportunity to the Petitioners in participating in the proceedings and setting forth their defence.

7. Under the circumstances and in the interest of justice, the Petition is allowed. Petitioners/defendants nos.1 to 4 and 9 are permitted to file their written statements within a period of two weeks from the date of the order subject to payment of costs of Rs.5,000/- each.

8. Petition stands disposed of.

PREETI
H JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)