

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

WRIT PETITION 7117 OF 2022

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Rahul Dilip Borhade

... Petitioner.

Versus

Jayprakash Rajdev Mall & Ors.

... Respondents.

Mr. R. S. Datar, Advocate Akshay J. Kandarkar for the
Petitioner.

Ms. Aditi S. Naikare, Advocate aa/w. Pradeep J. Thorat for
Respondents.

CORAM : ROHIT B. DEO, J.

DATE : JUNE 17, 2022

P.C. :-

1. The Petitioner is Defendant 1 in Special Civil Suit 196 of 2016 which is brought for declaration, injunction and “u/s. 53A of the Transfer of Property Act”.
2. The subject matter of the suit is Gala 712, Block “E”, Vegetable Market Complex, Sector 19, Navi Mumbai 400 703.
3. It appears to be a common ground that the Plaintiff/ Defendant No. 1 is lessee, and the lessor is Agricultural Produce Market Committee. The plaintiff claims to hold sub lease / assignment from Defendant 1 lessee.

4. Defendant No. 1 preferred Application Exh. 29, seeking permission to file written statement which the trial Court has rejected vide order dated 13.12.2016. It further appears that after the said order dated 13.12.2016, the Defendant - 1 participated in the proceedings and preferred an Application for appointment of Court Commissioner. It was only vide application dated 13.03.2021 that Defendant 1 sought permission to file written statement. It appears that although there is no prayer as such for setting aside "no written statement order", such order is made by the trial Judge below Exh.38.

5. The learned trial Judge has refused leave to file on record written statement, holding that there is no justification pleaded for the inability to file written statement within the stipulated period. It is difficult, not to agree. I have perused the recitals in the Application, seeking leave to file written statement and there is absolutely no acceptable justification for preferring the application, seeking leave to file written statement after more than four years or thereabout after the "no written statement order". The learned counsel for Defendant 1 would submit that the alleged suit transaction is clearly illegal and incapable of being specifically enforced. I need not delve deeper. This submission is a submission of law, which shall undoubtedly to be considered and adjudicated by the learned trial Judge. However, to the extent the learned trial Judge has refused to permit Defendant 1 to file written statement, I see no reason to

interfere.

6. Subject to the observations supra, the Petition is dismissed.

(ROHIT B. DEO, J.)

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