

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3410 OF 2021

Kawadu s/o Champuji Chavhan
Aged about 55 yrs.,
Occ: Agriculturist, R/o Khapa,
Post – Masod, Tah. Katol,
Dist. Nagpur. **PETITIONER**

...V E R S U S...

Meghraj s/o Kaluramji Malani
Aged about 52 yrs.,
Occ: Business, R/o Main Road
Kondhali, Tah. Katol,
Dist. Nagpur. **RESPONDENT**

Mr. R. R. Prajapati, Advocate for Petitioner.
Mrs. Smita Taksande, Advocate for Respondent.

CORAM: **ROHIT B. DEO, J.**
DATE: **18th FEBRUARY, 2022.**

ORAL JUDGMENT:

Heard Mr. R. R. Prajapati, the learned counsel for the petitioner and Mrs. Smita Taksande, the learned counsel for the respondent.

2. The petitioner is the defendant in Special Civil Suit 613/2018 instituted by the respondent seeking decree of specific performance of contract qua agricultural field admeasuring 0.84

HR situated at Mouza Khapa, Tahsil Katol, District Nagpur.

3. Considering the controversy, only few facts are relevant.

4. The learned trial Judge proceeded in the absence of written statement vide order dated 02.04.2019. The defendant moved an application for setting aside the said order and for grant of permission to place on record the written statement, which application was allowed vide order dated 25.04.2019. While allowing the said application, the defendant was directed to pay Rs.1000/- (Rupees One Thousand) to the plaintiff as costs and the learned Judge observed that the written statement would be exhibited after the payment. Pertinently, there is no timeline stipulated in the said order.

5. Be that as it may, the defendant sought time to pay the costs, which the learned trial Judge rejected. The defendant then preferred another application Exhibit-19 for setting aside the order vide which the trial Judge refused to grant time to pay the costs. By the order impugned dated 12.02.2020 the learned trial Judge has rejected the said application.

6. I am satisfied that the order impugned is unsustainable.

7. The observation that if the application is allowed the previous orders of the Court will be overridden, is uncalled for. I have already noted *supra*, that while setting aside the no written statement order, no particular time line was stipulated and all that is observed is that the written statement will be exhibited after payment of the costs. It is true that the defendant sought time to pay the costs which application came to be rejected. However, this Court cannot be oblivious to the fact that important property rights are involved. The defendant claims to be a poor agriculturist and a victim of a money lending transaction. The said submission apart, I am satisfied that in the absence of a specific condition making the permission to file on record written statement conditional upon payment of the costs, the order impugned is unsustainable.

8. The order impugned is quashed.

9. The written statement placed on record be exhibited.

10. The trial court is requested to decide the suit as

expeditiously as possible.

JUDGE

NSN