

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

WRIT PETITION NO.2204 OF 2022

(Vinod Sitaram Chafale Vs. Sitaram Narayan Chafale)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. K. R. Lule, Advocate for Petitioner.

CORAM: ROHIT B. DEO, J.

DATE: 25th APRIL, 2022.

The petitioner is the defendant in Regular Civil Suit 83/2018 which is instituted by his father – who is the respondent herein for a declaration of ownership of the suit field.

2. The petitioner appeared in the trial court pursuant to receipt of the suit summons on 24.04.2019 and applied for grant of time to file written statement. The petitioner was granted time till 04.07.2019. Again, the petitioner sought time to file written statement, which was granted by the court till 23.07.2019. The petitioner again applied for further time to file written statement and he was granted time till 19.08.2019. On that date, the petitioner again sought time to file written statement and as a last chance he was granted time till 24.09.2019. The petitioner did not file written statement and the trial court proceeded in the absence of written statement and the suit is now fixed for evidence.

3. The defendant preferred an application dated 24.09.2019 which is not supported by an affidavit and which contain a bald statement that due to illness he could not contact his counsel and therefore, he be permitted to file on record the written statement. This application is rejected by the learned trial court vide order dated 09.10.2020. The rejection is on the premise that despite grant of sufficient opportunity the petitioner – defendant did not file written statement, that the ground of illness is absolutely unsubstantiated and that the application is also not supported by an affidavit.

4. I have noticed a pattern in the negligent conduct of the petitioner. He availed several chances to file written statement and after the court proceeded in the absence of written statement he sought permission to file written statement without even disclosing the alleged illness. The petitioner did not place on record a single document to support the plea of illness. It is in this view of the matter that the fact that the application is not supported by an affidavit assumes significant.

5. Even in the memo of petition the alleged illness is not disclosed nor is any attempt made otherwise to show *bona fides*. The order impugned was passed on 09.10.2020. The petitioner permitted the proceedings to progress and it is only in April, 2022 that the petition is filed.

6. While the provisions of Rule 1 of Order VIII of the Civil Procedure Code are held directory, entertaining an application at the behest of a litigant who is *ex facie* callously negligent, and particularly in the absence of any attempt made to plead much less prove the justification, it would be subversive of the legislative intent to permit the petitioner to set the clock back.

7. The petition is without substance, and is dismissed.

JUDGE

NSN