

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

WRIT PETITION NO. 4638 OF 2022

Dilip Manoharrao Wankhede Vs. Sunil Ramkisan Malviya and ors

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
Mr. D.S.Agnihotri, Advocate for Respondent No.1
Mr. N.R.Patil, AGP for Respondent No.4

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/08/2022

1] Heard Mr.Lule, learned counsel for the petitioner and Mr. Agnihotri, learned counsel for Respondent No.1.

2] The present petition challenges the order dated 15.7.2022 whereby the application of the defendant/petitioner, for permission to file the Written Statement has been rejected.

3] Mr. Lule, learned counsel for the petitioner submits that the delay has been explained in paras 2, 3 and 4 of the application below Exh. 75 and was sufficient to have been accepted by the learned trial Court for permitting the Written Statement to be placed on record. The learned trial Court having not so done, the impugned order is liable to be quashed and set aside.

4] Mr. Agnihotri, learned counsel for respondent No.1 on caveat opposes the application and supports the impugned order.

5] The suit was filed in the year 2014. The defendant/petitioner was served on 14.3.2014. The “No WS” order came to be passed on 7.7.2014. The affidavit in lieu of examination in chief of plaintiff/respondent came to be filed on 14.10.2017. The application for amendment of the plaint came to be filed on 26.7.2018. The Court Commissioner was appointed and filed its report on 29.1.2020. The plaintiff has examined himself and the 3rd witness for the plaintiff is being examined, at which stage the application seeking permission to file the Written Statement by the defendant no.1 has been filed on 23.8.2021. By an order dated 16.12.2021, the application was allowed, which was set aside in Writ Petition No. 847/2022 on 8.4.22 and the matter was remanded back for deciding afresh, after which the impugned order has been passed.

6] A perusal of the application at Exh.75 indicates that though the petitioner/defendant No.1 was aware of all the stages of the suit and was actively participating in the same, no such application, for setting aside the ‘No WS’ order dated 7.7.2014 and permission to file WS on record came to be filed till 23.8.2021, a period of more than 7 years. The application, does not

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indicate any plausible explanation, except for a singular statement that the petitioner has a good case on merits, considering which I do not see any reason to interfere in the impugned order. The petition is without any merit and is accordingly dismissed.

JUDGE

Rvjalit