

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

WRIT PETITION NO. 861 OF 2022

1. Smt. Indubai Ashokrao Bhatkar, aged about 58 years, Occ. Household,
2. Shri Sudhir Ashokrao Bhatkar, aged about 41 years, Occ. - Agriculturist, Both R/o Suraksha Colony, Panchasheel Chowk, Tapovan, Amravati, Tq. and Distt. Amravati.
3. Sau. Sangita Pradiprao Wankhade, Aged about 43 years, Occ. - Household, R/o Sanewadi, Wardha, Tq. and Distt. Wardha

.... PETITIONERS

// VERSUS //

Shri Shrikrushna Anandrao Hirode, Aged about 50 years, Occ.- Business, R/o Wat-pur, Tq. Nandgaon Khandeshwar, Distt. Amravati.

.... RESPONDENT

Shri A.P. Thakare, Advocate for the petitioners.

CORAM : ROHIT B. DEO, J.
DATED : 17/02/2022.

ORAL JUDGMENT :

Heard. With Consent, the petition is heard finally.

2. The petitioners are the plaintiffs who have instituted Special

Civil Suit No.44 of 2019 seeking decree of Specific Performance of Contract.

3. The plaintiffs are in writ jurisdiction questioning the order dated 09.08.2021 rendered by the Trial Court whereby the “No W.S.” order is set aside subject to payment of cost of Rs.2500/- to the plaintiffs. I have scrutinized the reasons recorded by the learned Trial Court for permitting the defendants to file Written Statement, and I am in complete agreement.

4. The consideration of the learned Trial Court reads thus :

“4. Certainly the suit is pending since 20.02.2019. After valid service of summons defendant was duty bound to present the W.S. within 90 days. The valid service is on 15.3.2019. The defendant was duty bound to file W.S. on or before 16.6.2019. But considering the COVID-19 situation the lock down and SOP by Hon’ble High Court on time to time, certainly the delay caused by defendant but it does not appear to be a deliberate one. To adjudicate the real substantial issues between parties a W.S. needs to be taken on record by setting aside the no W.S. order subject to heavy cost. In the result following order :

ORDER

1. The application Exh.31 is allowed.

2. No W.S. order is set aside subject to cost of Rs.2500/- payable to the plaintiff on or before next date without fail. On payment of cost. W.S. be taken on record.”

5. Important property rights are involved. Irrefutably, while the affidavit in lieu of oral examination-in-chief is filed on record, there is no further step taken pursuant thereto. In such a situation, the plaintiffs shall not be subject to any prejudice, if the defendant is permitted to place on record the Written Statement. Exercise of discretion, in such matters, would not be vulnerable to scrutiny in writ jurisdiction.

6. It is expected that the Trial Court will decide the suit expeditiously.

7. Subject to the observations *supra*, the petition is dismissed.

(ROHIT B. DEO, J.)

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