

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11417 OF 2021

AURANGABAD MUNICIPAL CORPORATION
VERSUS
VIVEKANAD SHIKSHAN SANSTHAN

...

Advocate for Petitioner : Mr. Vaidya Ameet R.
Advocate for Respondent : Mr. Darak Umesh P

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CORAM : SHAILESH P BRAHME, J.

DATE : 29th NOVEMBER 2023.

Per Court :

. Heard the learned Counsel for both sides finally at the admission stage.

1. Being aggrieved by order rejecting application at Exhibit-16 filed by the petitioner for setting aside the 'no written statement order', present petition is filed.

2. The petitioner is the defendant. The respondent has filed RCS No.01/2017 for injunction. On 27.06.2017, despite appearance in the proceeding, the petitioner did not file written statement hence its right to file written statement forfeited. On 18.11.2019, an application at Exhibit-16 seeking setting aside an order dated 27.06.2017 is filed alongwith a copy of written statement. By order dated 09.12.2019, application of petitioner is rejected.

3. The learned Counsel for the petitioner submits that the learned Judge has adopted hyper technical approach. The petitioner being a public body was unable to file written statement within stipulation. No malafide can be inferred from the conduct of the petitioner. He would submit that the learned Judge has committed error of jurisdiction.

4. The learned Counsel for the respondent supports the impugned order. He would submit that the petitioner is casual and the learned Judge is justified in rejecting his application. No case is made out for exceptional circumstances for permitting the petitioner to file written statement by quashing the order of no written statement.

5. I have considered the rival submissions canvassed across the bar. Although there is delay in preferring application at Exhibit-16, the explanation has been tendered by the petitioner. Admittedly petitioner is a public body. There is no reason to infer that there are malafide or any oblique motive for not filing written statement in time. So far as the delay caused in preferring application (Exhibit-16) is concerned, it can be taken care of by imposing cost upon the petitioner. The written statement has already been filed on record. The petitioner is expected to cooperate with the trial Court. I, therefore, pass the following order :

ORDER

(i) The impugned order dated 09.12.2019 passed below Exhibit-16 in RCS No.01/2017 by the learned Civil Judge, Senior Division (Corporation Court), Aurangabad is quashed and set aside.

- (ii) The application at Exhibit-16 shall stand allowed.
- (iii) The written statement filed on record be read in evidence. The petitioner shall pay cost of Rs.15000/- to the respondent. The cost shall be deposited in the trial Court within a period of four weeks from today. On depositing the cost, the respondent shall be at liberty to withdraw the amount.
- (iv) The petitioner shall cooperate the trial Court for early decision of the suit.
- (v) The writ petition is disposed of in the above terms.

[SHAILESH P BRAHME, J.]

Najeeb.