

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5303 OF 2022

Sindhubai Dhondiram Gore

PETITIONER

VERSUS

Pratapsing Ramsing Thakur (Died) LRs & Others RESPONDENTS

.....

Mr. Manish P. Tripathi, Advocate for the petitioner

Mr. M. P. Bhaskar, Advocate for respondents No.1a to 1f

.....

[CORAM : SHAILESH P. BRAHME, J.]

DATE : 2nd NOVEMBER, 2023

ORDER :

1. Heard learned advocates for the respective sides for final disposal at the admission stage.
2. Learned advocate for the petitioner seeks permission to delete respondents No.2 to 4. Leave granted. Amendment to be carried out forthwith.
3. The petitioner is original defendant No.1 in Regular Civil Suit No. 68 of 2018, filed by respondent No.1 – plaintiff for declaration and possession.
4. The petitioner received summons on 31st January, 2018. She appeared on 13th September, 2018. On 14th January, 2019,

the Trial Judge, passed order of proceeding without written statement of the petitioner.

5. The petitioner filed application Exhibit-31 for setting aside the "*no written statement*" order passed on 14th January, 2019. She explained the delay in her application. The same is contested by the respondents. On 6th February, 2020, application of the petitioner is rejected. Thereafter, she again filed application Exhibit-39 for setting aside "*no written statement*" order, but this time it is accompanied by the written statement. The subsequent application is also rejected on 23rd March, 2022.

6. Orders dated 6th February, 2020 below Exhibit-31 and dated 23rd March, 2022 below Exhibit-39, are under challenge in this petition.

7. Learned advocate for the petitioner submits that due to the compelling circumstances, the petitioner could not file the written statement within time. The necessary instructions and documents could not be furnished to her lawyer. Delay is not intentional. He further informs that the written statement is already on record. He submits that the petitioner undertakes to co-operate the Trial Court for expeditious disposal of the suit.

8. Per contra, learned advocate Mr. Mithun Bhaskar, appearing

for respondents No.1a to 1f, supports both the impugned orders. He submits that the petitioner is not diligent and has adopted dilatory tactics. The suit is of the year 2018 and the petitioner is enjoying the possession of the suit property unauthorizedly. He would pray to confirm the impugned orders.

9. It appears from the record that the petitioner received summons on 31st January, 2018. She appeared on 13th September, 2018. As per the mandate of the law, she should have filed the written statement by 31st January, 2019. Meantime, on 14th January, 2019, "*no written statement*" order was passed. Though there is delay in filing the application for setting aside the "no written statement" order, it cannot be said to be inordinate delay. There is no reason to disbelieve the reasons assigned by the petitioner in her applications Exhibits-31 and 39. Ends of justice would be met if the "*no written statement*" order is quashed and the written statement, which is already filed on record, is directed to be considered.

10. In view of above, impugned orders dated 6th February, 2020 below Exhibit-31 and dated 23rd March, 2022 below Exhibit-39 passed by learned Civil Judge, Junior Division, Sailu in Regular Civil Suit No. 68 of 2018 are quashed and set aside. The written statement, which is already filed on record by the

petitioner, is directed to be read and considered in Regular Civil Suit No. 68 of 2018. The petitioner shall co-operate in expeditious disposal of the suit. The petitioner shall pay cost of Rs.5000/- to the plaintiffs in the Trial Court, within a period of four weeks from today, which is a condition precedent. Writ petition is disposed of in above terms.

[SHAILESH P. BRAHME]
JUDGE

drp/wp5303-22.doc