

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

908 WRIT PETITION NO.7030 OF 2022

**MOHAMMAD YUSUF MOHAMMAD HARUN MUKATI
VERSUS
SHER KHAN MIYA KHAN AND OTHERS**

...
Advocate for Petitioner : Mr. Milind K. Deshpande
Advocate for Respondent No.1 : Mr. Namit S. Muthiyan
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 02-03-2023

PER COURT :

. Heard.

2. By this petition, the challenge is to the order dated 16.08.2021 passed by the Trial Court in Special Civil Suit No.34 of 2014 rejecting the petitioner's application for setting aside the order of 'no written statement' passed on 22.09.2017. Special Civil Suit No.34 of 2014 was instituted by the respondent no.1 - plaintiff seeking specific performance of the agreement to sale dated 24.08.2010. The agreement was executed by the respondent no.1 with the respondent nos.2 to 7. Subsequently by agreement dated 27.12.2013 the present petitioner entered into an agreement of sale with respondent nos.2 to 7. In the year 2014, the Special Civil Suit No.34 of 2014 came to be filed and in the year 2017 the petitioner was directed to be impleaded as defendant no.8 in the proceedings.

A summons came to be issued to the petitioner and on 02.05.2017 an appearance is caused by the petitioner through his counsel by filing *vakalatnama* and on the same day an application for adjournment was filed which came to be granted. Thereafter the petitioner failed to file the written statement and on 22.09.2017 the trial Court passed an order of 'no written statement'. On 23.02.2021 the petitioner moved an application for setting aside 'no written statement' order and sought to tender the draft written-statement.

3. Heard the learned counsel appearing for the parties.

4. The learned counsel appearing for the petitioner submits that although in the year 2017 the petitioner had caused an appearance through his counsel, there was a change of advocate and new advocate has filed his *vakalatnama* on 11.10.2019. He further submits that due to the lock down in March-2020, no application could be moved on behalf of the petitioner and ultimately on 23.02.2021 the application came to be filed for setting aside 'no written statement' order and for taking the written-statement on record. He further submits that imposition of costs would meet the ends of justice.

5. In support of his submissions, learned counsel for the petitioner relies upon the decisions of the Apex Court in the case of **Zolba vs. Keshao and Others, (2008) 11 SCC 769** and **C.N. Ramappa Gowda vs. C.C. Chandregowda (Dead) By LRs and another, (2012) 5 SCC 265**.

6. Per contra, the learned counsel appearing for the respondent no.1 vehemently opposed the application. He has invited the attention of this Court to paragraph no.5 of the impugned order wherein there is a specific finding that the copies had been served on the petitioner along with the summons through the bailiff. He further submits that subsequently the respondent no.1 had furnished another set of copy to the petitioner.

7. Considered the submissions of the parties.

8. After having caused an appearance in the year 2017, no steps were taken by the petitioner to file his written-statement. On 22.09.2017 the order of 'no written statement' came to be passed. It is not disputed that at the relevant time the petitioner was represented by the counsel and there is no explanation as to why no steps were taken either to set aside 'no written statement' order or

seek permission to file the written statement till 23.02.2021. The only case which has been made out by the petitioner in his application dated 23.02.2021 is that the copies were not supplied to the petitioner. There is a specific finding of the trial Court based on the bailiff report that the bailiff had served the summons and the copies upon the petitioner. Further as submitted by the learned counsel for the respondent no.1, the hard copies were once again supplied to the petitioner, which fact has not been disputed by the learned counsel for the petitioner. In such circumstances, there is no cause made out by the petitioner for the delay caused in preferring the application for setting aside 'no written statement' order. From the impugned order, it appears that the trial has commenced and the respondent no.1 has examined himself and the witnesses. The proceedings are of the year 2014 and although the present petitioner has been impleaded in the year 2017, no steps were taken by the petitioner to file the written-statement. The reason advanced of the national lock down cannot be considered inasmuch as the order of 'no written statement' was passed on 22.09.2017 and the lock down was imposed on 25.03.2020. In my opinion, by permitting this application the respondent no.1 - plaintiff would be put to irreparable loss inasmuch as *de novo* trial would commence. Since the year 2014 respondent no.1 has been diligently pursuing his suit and at the

instance of the petitioner who has been negligent in defending case, injustice cannot be caused to him. The reliance of the petitioner on the decisions of the **Zolba** and **C.N. Ramappa Gowda** (*supra*) do not assist his case inasmuch as the decisions are rendered in completely different fact situation.

9. In light of the above, considering the entire material it is evident that the petitioner has been negligent and has failed to defend the case. Further, there is no sufficient cause which has been shown by the petitioner which would compel this Court to exercise the discretion in favour of the petitioner.

10. In view of the above, there is no merit in the petition. Writ Petition stands dismissed.

(**SHARMILA U. DESHMUKH, J.**)