

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1709 OF 2022

Ravindra Bhargav Patil
deceased through LRs.

...Petitioners

Versus

Kumar Narayan Baikar & Ors.

...Respondents

...

Mr. Rohit D. Joshi for Petitioners.

Ms. Dhanashree Hublikar i/b Mr. Unmesh Breed for Respondents.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 21st FEBRUARY, 2023.

P.C.:

1 By this Petition Petitioner assails order dated 1st January 2022 passed by the 2nd Joint Civil Judge Senior Division, Alibag thereby allowing Application of Respondent No.3/Defendant No.3 for taking Written Statement on record.

2 Defendant No.3 was served with suit summons on 4th November 2019. He appeared in the suit on 15th November 2019 but failed to file Written Statement within the stipulated time. The Court proceeded to pass "No Written Statement" order against Defendant No.3 on 3rd February 2020. Thereafter it appears that Petitioners-Plaintiffs filed Affidavit of evidence. Defendant No.3 filed an Application seeking permission to file Written Statement on 29th November 2021. That Application has been allowed by the trial Court subject to imposition of costs of Rs.2,000/-.

3 Appearing for the Petitioners Mr. Joshi, the learned Counsel would submit that Defendant No.3 failed to cite any cogent evidence in his Application for non-filing of Written Statement within the stipulated time. He would further submit that the trial in the suit had commenced on account of framing of issues on 3 February 2020 as well as on account of filing of Affidavit of evidence by Petitioners-Plaintiffs and at such a belated stage, the trial Court ought not to have allowed the Application of Defendant No.3. He would further submit that the trial Court has erroneously accepted the reason of Covid-19 pandemic for allowing the Application of Defendant No.3 when in fact Defendant No.3 had ample opportunities to file Written Statement till commencement of Covid-19 pandemic.

4 Ms. Hublikar, the learned Counsel appearing for Respondent No.3 would oppose the Petition and support the order passed by the Trial Court.

5 After having heard the learned Counsels appearing for the parties, it appears that Defendant No.3 was served with the suit summons on 4th November 2019 and ought to have filed Written Statement within the time limit stipulated in Order VIII Rule 1 of the Code of Civil Procedure, 1908. He filed an Application to take the Written Statement on record almost after lapse of two long years on 29th November 2021. One of the reasons cited for non-filing of Written Statement within stipulated time is Covid-19

pandemic. Defendant No.3 has also cited a reason of Defendant No.1 handling the proceeding of the suit.

6 The trial Court has proceeded to allow the Application by imposing costs of Rs.2,000/-. It is now well settled position in law that the provisions of Order VIII Rule 1 of Code of Civil Procedure are directory in nature and cannot be construed as mandatory. Reference in this regard can be made to the decision of the Apex Court in **Kailash vs. Nanhku** 2005 (2) Mh.L.J. 775. Considering the fact that the functioning of the Courts was crippled with the Covid-19 pandemic, it cannot be stated that the trial Court has committed an error in allowing the Application of Defendant No.3 so as to warrant interference by this Court under Article 227 of the Constitution of India. At the same time Defendant No.3 appears to be casual approach and has made an attempt to file Written Statement after a period of two long years. In the meantime, Petitioners-Plaintiffs have already filed Affidavit of evidence. Though the cross-examination of Petitioners-Plaintiffs is yet to begin, the entire clock is likely to be set back on account of filing of Written Statement by Defendant No.3. In such circumstances, while allowing the Application of Defendant No.3, the Trial Court ought to have awarded substantial costs in favour of Petitioners-Plaintiffs. I accordingly proceed to pass the following order:

ORDER

- i) Order of the trial Court is upheld, subject to the modification as under:
- ii) Respondent No.3/Defendant No.3 to pay to Petitioners-Plaintiffs costs of Rs.10,000/- over and above the costs already awarded by the trial Court.
- iii) The costs to be deposited in the trial Court within a period of four weeks from today. Non-deposit of costs within stipulated period would result in revival of 'No Written Statement' order against Defendant No.3.
- iv) The Writ Petition is accordingly disposed of.

(SANDEEP V. MARNE, J.)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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