

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1665 OF 2023

Ashok Chandroji Kale ... Petitioner
V/s.
Anandasa Eknathasa Malaji & Ors ... Respondents

Mr. Kuldeep U Nikam, for the Petitioner.

Mr. C. D. Mali, AGP, for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 1, 2023

P.C.:

1. The petitioner who is the original defendant No.7 is challenging order passed by the Trial Court rejecting his application to recall order of no written statement.
2. Respondent No.1 is the original plaintiff who filed Regular Suit No.339 of 2017 which was thereafter renumbered as Regular Suit No.52 of 2020 for mandatory injunction to execute sale deed. The present petitioner has filed an application under Order 1, Rule 10 of the Code of Civil Procedure, 1908, which was allowed on 17 October 2018. The Trial Court on 7 September 2019 passed order of no written statement against the petitioner.
3. The petitioner on 4 February 2020 filed application for recalling of order of no written statement which came to be rejected by the impugned order.

4. The Trial Court recorded a finding that the petitioner failed to prove sufficient cause for delay in filing the written statement.

5. Office record shows that respondent No.1-original plaintiff is served. Despite, service neither respondent No.1 personally nor through his Advocate appeared before the Court.

6. On perusal of Exhibit 41, it appears that the documents necessary for preparation of written statement were with the Advocate in this Court. It is stated that the delay in filing written statement is not deliberate. In my opinion, cause of explanation by defendant No.7-petitioner is sufficient cause for recalling the written statement in the facts of the present case. Hence, following order:

a) The impugned order dated 8 April 2022 passed by the Civil Judge, Senior Division, Vita at Sangli below Exhibit 41 in Regular Civil Suit No.52 of 2020 is quashed and set aside.

b) The application below Exhibit-41 in Regular Civil Suit No.52 of 2020 is allowed.

7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)