

Nikita

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

WRIT PETITION NO.13396 OF 2023

Naim Abdulshakur Kachhi

... Petitioner

V/s.

Eknath Ramchandra Patil

... Respondent

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Mr. Ramesh R. Badi for the Petitioner.

Mr. Drupad S. Patil, for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 2, 2023

P.C.:

- 1.** Challenge in this petition is to the order passed by the Trial Court permitting defendant to file written statement in a suit for possession.
- 2.** According to the petitioner the delay caused is intentional and has been done only with a view to harass the petitioner. According to him, the exceptional reason as required by the Supreme Court in the case of **Kailash Vs. Nanhku and Ors.** reported in (2005) 4 SCC 480; has not been made out. Therefore, the Trial Court erred in allowing the application for filing written statement.
- 3.** On perusal of the suit, it appears that the suit is for possession of the suit premises. Considering the nature of suit, in

my opinion, the positive exercise of jurisdiction by the Trial Court need not be interfered with, however the cost as prayed by the petitioner before the Trial Court needs to be granted. Additionally, Rs.10,000/- for incurring cost of filing the petition deserves to be granted to the petitioner.

4. The learned advocate for the defendant on instructions makes a statement that the defendant is ready to pay the amount of Rs.35,000/- to the advocate for the plaintiff appearing in the Trial Court within two weeks from today.

5. The payment of cost shall be condition precedent before taking written statement on record.

6. With this modification, no interference under article 227 of Constitution of India is called for.

7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)