

VRJ

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

WRIT PETITION NO.12666 OF 2022

VAIBHAV
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Syamsunder Shrawan Nikam & Anr. ... Petitioners

V/s.

Ushabai Tulsiram Suradkar & Anr. ... Respondents

Mr. A. S. Rao with Mr. Yogiraj Purwant for the
petitioners.

Mr. Arvind S. Bhandare for the respondents.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 31, 2023

P.C.:

1. By the impugned order, the trial Court has rejected the application of defendant Nos.2 and 3 to set aside no written statement order and to take written statements of defendant Nos.2 and 3 on record.

2. The respondent No.1 has filed suit for specific performance. Suit summons was served on defendant Nos.2 and 3 on 13th November 2014. The petitioners on 9th March 2015 filed an application for setting aside no written statement order. However, by order dated 1st November 2018, the application was rejected on the ground that delay was not properly explained; application not supported by affidavit.

3. The petitioners, therefore, filed second application seeking same relief on 2nd January 2019, which came to be rejected by order dated 27th June 2019. The second application is rejected on the ground that earlier application was rejected and, therefore, the application seeking same relief is not maintainable.
4. On perusal of the first order, it appears that the earlier application was not rejected on merits, therefore, second application was maintainable.
5. Considering the nature of the suit i.e. suit for specific performance, it is in the interest of justice that defendant be permitted to file written statement. However, prejudice caused to the plaintiff can be compensated in terms of money. Hence, following order:
 - a) The application below Exhibit-17 in Special Civil Suit No.217 of 2014 is allowed.
 - b) The petitioners are permitted to file written statement subject to payment of cost of Rs.10,000/-.
6. The civil writ petition stands disposed of.

(AMIT BORKAR, J.)