

Nikita

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

WRIT PETITION NO.12964 OF 2023

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Ashok Deendayal Sarda

... Petitioner

V/s.

Rupnarayan R. Sarda and Ors.

... Respondents

Mr. Neel G. Helekar a/w Mr. Kanhaiya S. Yadav for the
Petitioner.

Ms. Anita Bhaktwani for Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 19, 2023

P.C.:

1. By the impugned order, the Trial Court rejected the applications of defendant for permission to file written statement and documents on record.

2. It appears that the respondent/plaintiff has filed suit for partition to the extent of 1/3rd share in the suit premises and consequential injunction. Petitioner's father filed written statement. After his death, the petitioner was served with suit summons on 11th August 2021. advocate for the petitioner filed Vakalatnama on 5th January 2023.

3. The evidence of the parties was thereafter recorded. On 5th April 2023, the Trial Court passed no evidence order against the

petitioner.

4. Insofar as the order refusing to allow the petitioner to file written statement is concerned, since the original defendant had filed written statement, the petitioner would be entitled to the benefit of said written statement as if it is filed by the petitioner. If the petitioner intended to amend the written statement, it was open for the petitioner to file application for amendment of written statement. However, if the petitioner is filing new written statement, it will be governed by Order 8 Rule 1 which requires defendant to explain the delay in filing the written statement supplying exceptional reason. It was also permissible for the petitioner to file subsequent proceedings as per Order 8 Rule 9 of Code of Civil Procedure, 1908. The reasons mentioned in the notice of motion are to the effect that the petitioner is layman not acquainted with legal procedure, he was not knowing any advocate in Mumbai and, therefore, there was delay. The said reason cannot be treated as exceptional reason.

5. According to petitioner he intended to produce original copies of the registered document namely registered gift deed, registered will and registered sale-deed, based on written statement filed by the father. If the petitioner is entitled to produce such document, it shall be open for the petitioner to apply before the Trial Court for appropriate relief to bring on record the registered document however, for the said purpose, the petitioner will have to make out a case for recalling of order of no evidence. If such case is made out by the petitioner, petitioner can be permitted to place on record copies of registered document if

production of such registered document are permissible based on written statement filed by the father.

6. With this clarification, I find no legal infirmity in the order.
7. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)