

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.11492 OF 2013**

Ananta Parshuram Nikam & Ors.

...Petitioners

**Versus**

Shakuntala Hari Badekar & Ors.

...Respondents

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*Mr. H. D. Chavan i/b Mr. T. D. Deshmukh for the petitioners*

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**Coram : Sharmila U. Deshmukh, J.**

**Date : July 10, 2023.**

**P. C. :**

1. Heard.
2. At the outset, leave to amend to delete the respondent no. 5 who is stated to have expired. The amendment be carried out forthwith.
3. The petition questions the order dated 20<sup>th</sup> September, 2013 rejecting the petitioner's application for setting aside the "No WS" order and refusing to take the written statement on record.
4. Respondent Nos. 1 to 4 have filed Regular Civil Suit No. 32 of 2011 seeking declaration that the sale deed executed in respect of the suit property is null and void and for injunction. The petitioners

were duly served, however, the written statement was not filed within a period of 90 days and as such, on 17<sup>th</sup> September, 2011 the Trial Court passed an order of “No WS”. On 25<sup>th</sup> July, 2023 the petitioners filed an application for setting aside the order of “No WS” and for taking the written statement on record which came to be rejected by the impugned order.

5. In spite of service, none appears for Respondent Nos. 1 to 4. Considering the limited controversy which arises in the present petition, the petition is taken up for hearing.

6. Heard learned counsel appearing for the Petitioner.

7. Learned counsel appearing for the petitioner has invited the attention of this Court to the application filed for setting aside the “No WS” order and would contend that sufficient explanation has been provided therein for not filing the written statement within a period of 90 days. He would further submit that the application has been rejected for the reason that the application does not mention the details and only mentions that the petitioners are agriculturist and unable to file their written statements on record. He would further submit that the suit is pending for framing of issue and the trial not having commenced, the petitioners be permitted to contest

the proceeding on merit.

7. Considered the submissions.

8. It is settled that the period of 90 days set out by the provisions of Order 8, Rule 1 is directory and not mandatory. Perusal of the application for setting aside the "No WS" order discloses the reason that as the relevant documents were not available with the petitioner and the sale deed was of the year 1968, necessary information in that regard was sought. The Trial court has rejected the application for the reason that the details of the documents have not been set out. In my opinion, considering that the suit is pending for framing of issues and that in the year 2013 itself the application was moved for setting aside the "No WS" order and taking written statement on record, it could not be said that the petitioners were not diligent in prosecuting the proceeding. The explanation put forward is that the relevant documents were not available with the petitioner and the records being old, considerable time was spent in gathering the necessary documents. The said explanation cannot be disbelieved as the suit challenges the sale deed of the year 1968 in the year 2011.

9. For the reasons above, in my opinion, the petitioner should be given an opportunity of contesting the proceedings on merit. Hence,

the impugned order dated 20<sup>th</sup> September, 2023 is quashed and set aside subject to payment of cost of Rs. 2000 by the Petitioner to the respondent nos. 1 to 4. The cost to be paid within a period of two weeks. The writ petition stands allowed.

**[Sharmila U. Deshmukh, J.]**