

AGK

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

WRIT PETITION NO.11049 OF 2023

Devendra Shankar Palshetkar & Ors. ... Petitioners

V/s.

Citivill Realty Nexus Pvt. Ltd. & Ors. ... Respondents

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Mr. S.S. Redekar for the petitioners.

Mr. Sandesh Deshpande with Mr. Bhavesh Bhate for
respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 6, 2023

P.C.:

1. Challenge in this writ petition is to the order dated 17 November 2022 rejecting notice of motion to recall order of no written statement passed against defendant Nos.4, 9, 10 and 11.

2. At the outset, learned advocate for the petitioners, on instructions, states that he will restrict his prayer to the amended portion of the plaint, which was served on defendant Nos.4, 9, 10, and 11 on 5 January 2022. In the light of said concession, the impugned order needs to be considered.

3. It appears that original suit was for specific performance of agreement dated 9 June 2006 and for possession. By amending the plaint, prayer to declare conveyance dated 31 December 2009 as not binding was inserted and alternative plea of damages of Rs.75

lakh against defendant Nos.1 to 13 is also added. Since the petitioners are restricting their right to file written statement only to the amended portion of the plaint, the petitioners having been served with the amended plaint on 5 January 2022 and the notice of motion to set aside the order of no written statement was filed in July 2022, the explanation provided in the notice of motion needs to be accepted as exceptional reason permitting petitioners to file written statement. However, delay in filing such written statement needs to be compensated in terms of costs. Hence, following order:

- a) The impugned order dated 17 November 2022 passed by the City Civil Court No.1 in Notice of Motion No.2376 of 2022 in Suit No.3056 of 2010 is partly allowed;
 - b) Notice of Motion No.2376 of 2022 in Suit No.3056 of 2010 is partly made absolute to the extent of amendment of plaint to incorporation prayer clause (b-2);
 - c) The petitioners shall pay costs of Rs.10,000/- to the plaintiff.
- 4.** The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 14th September 2023 for deleting words “(b-1)” from paragraph 3-b.