

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO. 2044 OF 2023**

Sharad Purushottam Raut \_\_ Vs. \_\_ Sonai Keshavrao Meshram and ors

Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

Mr. Tejas Deshpande, Advocate for petitioner

**CORAM : AVINASH G. GHAROTE, J.**  
**DATE : 30/03/2023**

1] Heard Mr. Deshpande, learned counsel for the petitioner.

2] The petition challenges the order dated 6.1.2023, whereby the learned Trial Court has permitted the respondent nos. 1, 4 & 5 to place their written statement on record.

3] It is contended that the application below Exh.34 does not disclose any reason for the delay occurred and therefore, ought not to have been considered and allowed by the learned Trial Court. Reliance is placed upon Vinod Hanumandas Jayalwal vrs Gangadharrao Manikrao Mathane, W.P. No.928/2022, decided on 24.1.2023 by the learned Single Judge of this Court.

4] In the instant case, the respondent nos.1, 4 and 5 were set *ex parte* by an order dated 2.5.2022. Exh. Nos. 28 and 29 were filed for setting aside the *ex parte* order, those applications are allowed by an order dated 15.7.2022. It is consequent to that an opportunity to file written statement presented itself to the respondent nos.1, 4 & 5, consequent to which an application below Exh.34 came to be filed on 11.11.2022, which has been allowed by the impugned order dated 6.1.2023.

5] The provisions of Order 8 Rule 1 of C.P.C. have been held to be directory by the Hon'ble Apex Court. This would indicate that as far as possible, the trial of suit has to be on merits and not in default. In the instant case, since the opportunity to present the written statement only arose on 15.7.2022 when the *ex parte* order was set aside, the filing of the application for filing the written statement on 11.11.2022 is not of such a magnitude so as to deprive the respondent nos.1, 4 and 5 of their defence in the suit. **Vinod Jayalwal** (supra) relied upon by Mr. Deshpande, learned counsel for the petitioner in my considered opinion would not come to the rescue of learned counsel for the

petitioner in the present matter, as the factual position is not ascertainable. I therefore do not see any reason to interfere in the impugned order, which permits the suit to be decided on merit. The petition is dismissed. No costs.

**JUDGE**

*Rvjalit*