

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

Writ Petition (WP) No. 3326 of 2022

Chandu Aratmal Lulla and another
Versus
Smt. Kamalabai Bhawrilalji Samra and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms. Ritu Jog, Advocate for the petitioners.

Mr. P.R.Agrawal, Advocate for respondent nos. 1 to 3.

**CORAM : ANIL S. KILOR, J.
DATED : 8th MARCH, 2023.**

Heard.

2. The order below Exhibit 46 dated 29th March, 2022 passed by 3rd Joint Civil Judge, Senior Division, Amravati in Regular Civil Suit No. 234 of 2017, rejecting the application for permission to file written statement and counter-claim, is under challenge.

3. Ms. Jog, learned counsel for the petitioner submits that the petitioner is disputing the ownership of the plaintiffs over the suit property and the subsequent events compelled the petitioner to file the application for permission to file written statement and counter-claim.

4. It is submitted that the learned trial Court has not considered the subsequent events and rejected the application on the ground of delay.

5. On the other hand, Shri Agrawal, learned counsel for the respondents/plaintiffs points out that numerous opportunities were given to the petitioner to file written statement and ultimately on 14th February, 2020 no written statement order was passed, which was never sought to be set aside by filing application.

6. It is pointed out that, for one and half years from the order of no written statement, no application for permission to file written statement along with counter-claim was filed. However, at the stage when the evidence of plaintiffs was record and the matter was fixed for arguments, the said application came to be filed.

7. It is submitted that in the meantime, the petitioner made various attempts to stall the proceedings, initially by moving an application for stay, in view of the pendency of the Civil Suit No. 168 of 2012 and on rejection of said application, another application for stay of proceedings was filed on the ground that transfer application is pending. He therefore submits that, the learned trial Court has rightly rejected the application Exhibit 46.

8. In the light of rival contentions of both the parties, I have perused the record and impugned order.

9. I find substance made by Shri Agrawal, learned counsel for the respondents that for filling written statement more than sufficient opportunity was given to the petitioner, however, he failed to file the written statement and ultimately on 14th February, 2020, the trial Court passed no written statement order and proceeded in the matter.

10. The learned trial Court thereafter recorded the evidence of plaintiffs and when the matter was fixed for argument, the application exhibit 46 was filed after a period of one and half years of the order of no written statement. There is no prayer made by the petitioner for setting aside the order of no written statement and no explanation except the subsequent events was given.

11. Undisputedly, stage at what the application was moved, was at the stage of argument. Thus, at that stage in any case counter-claim cannot be permitted to be filed and further considering the delay in filling written statement, I do not find any illegality committed by the learned trial Court in rejecting the application. In the circumstances, the writ petition is dismissed.

12. In this case, while issuing notice, the petitioner was directed to deposit of Rs.15,000/-

towards costs, the same shall be transferred to the account of High Court Bar Association, Nagpur for purchasing high speed scanners.

[ANIL S. KILOR, J.]

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