

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4039 OF 2018

Shri Krishna @ Kisana Damuji Warghane,
aged about 51 years, Occ. Service,
R/o. At Post Sev, Tah. Umred, Dist. Nagpur.

.... **PETITIONER.**

// **VERSUS** //

Govinda Mirguji Waghmare,
R/o. 'Saptashruni Apartment',
1st Floor, In front of SBI,
Sakkardara Branch, Umred Road,
Sakkardara, Sudampuri, Nagpur.

.... **RESPONDENTS.**

Shri H.N.Bhondge, Advocate for Petitioners.

Shri Anand R. Agrawal, Adv. h/f. Shri N.R.Bhishikar, Adv. for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 02, 2023

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by
consent of the parties.

3. The order dated 17/04/2018 passed below Exh.15 by Joint Civil Judge Junior Division, Umrer in Regular Civil Suit No. 83 of 2017, rejecting application for permission to file written statement beyond statutory period, is under challenge in this writ petition.

4. The learned counsel for the petitioner points out that the suit for declaration and removal of the illegal encroachment and possession was filed by the respondent and as the petitioner could not file written statement within the statutory period an application was filed for permission. It is submitted that there was a delay of 9 days in filing the written statement, despite the same, the application came to be rejected. He, therefore, submits that the order impugned is erroneous.

5. On the other hand, the learned counsel for the respondent strongly opposed the present writ petition and supports the order passed by the learned trial Court.

6. The Hon'ble Supreme Court of India in a case of *Desh Raj ..vs.. Balkishan*, reported in **(2020) 2 SCC 708** has held that the provision of Order 8 Rule 1 of the Code of Civil Procedure is mandatory

in case of a commercial suit, whereas, it is directory in relation to other suits.

7. Admittedly, the suit in this case is not a commercial suit. Thus, considering the law laid down by the Hon'ble Supreme Court of India in the case of *Desh Raj* (supra), I am of the opinion that the learned trial Court ought to have permitted the defendant to file written statement by extending the time.

8. Accordingly, I have no hesitation to hold that the learned trial Court committed error in denying the permission to the defendant to file written statement by extending time. Hence, I pass the following order:

- i) The writ petition is allowed.
- ii) The impugned order dated 17/04/2018 passed below Exh.15 by Joint Civil Judge Junior Division, Umrer in Regular Civil Suit No.83 of 2017 is hereby quashed and set aside and thereby application Exh.15 is allowed.

Rule made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)