

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

WRIT PETITION NO. 14 OF 2022

1. Shri Dilip Baliram Khandare,
Aged about 51 years, Occ. Agriculturist
2. Shri Vinayak Baliram Khandare,
Aged about 59 years, Occ. Agriculture,
both R/o Ajni PO Fulamla, Tq. Nandgaon
Khandeshwar, Dist. Amravati

...Petitioners

// VERSUS //

Smt. Anjanabai W/o Anna Thorat @ Anjani D/o
Baliram Khandare, Aged about 69 years, Occ.
Household
R/o. S.S.-1, Room No. 500, Sector-1, Navi
Mumbai, Khopar Khairge, Thane, Dist. Thane.
Through Power of Attorney,
C/o Mr. Firoj Abdul Khan, Advocate
R/o Lala Pathan Compound, Kajupada, Near Mane
Compound, Borivali (East), Mumbai.

... Respondent

Shri Sawan Alaspurkar, Advocate for the petitioners.
Shri R.S.Nagpure, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 20th JUNE, 2023.

ORAL JUDGMENT :

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

2. The order below Exhibit 1 and order below Exhibit 15 dated
5th October, 2021 passed by Civil Judge, Junior Division, Nandgaon
Khandeshwar, Dist. Amravati, rejecting the application moved by the
defendants for permission to file written statement, is under challenge in
this writ petition.

3. The plaintiff filed a suit for cancellation of sale-deed dated 17th November, 1998, executed by deceased Baliram Khandare. The defendants were served with suit summons on 28th August, 2019 and the period of 90 days to file written statement, was ended on 28th November, 2019. Thereafter, due to Covid the limitation in all matters was extended by the Hon'ble Supreme Court of India from 15th March, 2020 till 2nd October, 2021. Thus, in this case the period from 28th November, 2019 till 15th March, 2020 i.e. the period of three and half months is the actual delay caused in filing written statement.

4. From the record, it appears that in the month of October, 2019, time to file written statement is extended and thereafter the application was moved on 14th July, 2021 to seek time to file written statement. The said application of written statement was rejected vide order dated 27th July, 2021.

5. On 27th July, 2021, the petitioners immediately moved another application for permission to file written statement on record and same was rejected vide impugned order dated 5th October, 2021.

6. Admittedly, the suit is not a commercial suit. Thus, considering the above referred dates and the fact that on the date of rejection of application of the petitioners, the order as regards limitation of Hon'ble Supreme Court was in force, I am of the opinion that petitioners should not be non-suited on technical ground, particularly when the delay is not inordinate and intentional.

7. In the circumstances, the impugned order dated 5th October, 2021 passed by the Civil Judge, Junior Division, Nandgaon

Khandeshwar, Dist. Amravati needs to be quashed and set aside. As far as the order dated 5th October, 2021 passed by the Civil Judge, Junior Division, Nandgaon Khandeshwar, Dist. Amravati at Exh.1 proceeding in the suit without written statement, it does not survive. Accordingly, I pass the following order.

- i. The writ petition is allowed;
- ii. The order below exhibit 15 and order below exhibit 1 dated 5th October, 2021 passed by Civil Judge, Junior Division, Nandgaon Khandeshwar, District Amravati in Regular Civil Suit No. 29 of 2019 are hereby quashed and set aside.

At this stage, learned counsel for the respondent prays to expedite the trial, considering the age of the plaintiff who is more than 71 years old.

Thus, considering the age of the petitioner and the nature of dispute, the learned trial Court is directed to expedite the suit and decide the same within one year. Both the parties have undertaken to co-operate with the trial Court to decide the suit within stipulated period.

[ANIL S. KILOR, J.]