

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

WRIT PETITION NO.5742 OF 2018

Wasankar Wealth Management, Nagpur and another .Vs. Shri Pradeep S/o
Vyankatesh Balpande

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

Court's or Judge's Order

Shri K.H. Dodani, Advocate for the petitioners.
Shri H.S. Puranik, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 04/07/2023

1. Heard.

2. In the present petition, the application for permission to file written statement came to be rejected vide impugned order dated 28.06.2018, is under challenge.

3. The application was rejected only on the ground that, the written statement was not signed by the defendant No.2 but it was signed by the mother of the defendant No.2 without any authority and further the ground that, the earlier lawyer was at fault, in not filing the written statement within stipulated period, is not a sufficient ground to permit the defendant No.2 to file written statement.

4. The learned counsel for the petitioner has fairly states that, at the time of filling of the written statement along with the application for permission to file written statement, no authority letter of the defendant No.2 was filed on record, giving authority to his mother. However, subsequently, after the impugned order was passed, the authority letter was obtained and placed on record. It is further submitted that in this case, the defendant was in jail from the year 2014 till 2022 and now, he is released and in the meantime, the property has been attached by the MPID Court.

5. It is further pointed out that, as the suit was stayed, there is no progress in the suit after the rejection of the application of the petitioner for filing of written statement.

6. In the above referred backdrop, as the learned counsel for the petitioner is not disputing the fact that, on the date of filing of the application for permission to file written statement, the mother of the petitioner had no authority in writing, I do not find any error committed by the learned trial Court in rejecting the application on the said ground.

7. As far as the ground relating to the change of lawyer and fault of the earlier lawyer. Any finding on the said part will not change the fate of the present petition, in

view of aforementioned discussion. Hence, I do not want to got into that issue.

8. In the circumstances, I do not find any error committed by the learned trial Court in rejecting the application. Hence, the petition is rejected.

9. At this stage, the learned counsel for the petitioner submits that, as the petitioner is out of jail and since the application for permission to file written statement was rejected on technical ground, he may be permitted to file fresh application for permission to file written statement.

10. The learned counsel for the respondent is opposing such request.

11. Considering the prayer to file fresh application and further having considered the reasons which prevented the petitioner to file written statement i.e. he was in jail, I am of the opinion that, one such opportunity should be given to the petitioner. Accordingly, the permission to file fresh application is granted. The learned trial Court shall decide such application if any filed by the petitioner, in accordance with law, taking into consideration the objection of the plaintiff, if any.