



; order has been corrected pursuant to speaking to minutes order dated 05/12/2024

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**949 WRIT PETITION NO. 745 OF 2016**

**BALASAHEB DATTATRAYA KHAMKAR**

**VERSUS**

**HARSHAL BANDERAO GAIDHANE AND OTHERS**

Mr. R. P. Phatke, Advocate for the petitioner

Mr. V. S. Badakh, Advocate for respondent no.1

Mr. T. S. Lodhe, Advocate for respondent nos.2 to 4

**CORAM : R. M. JOSHI, J.**

**DATE : 27<sup>th</sup> NOVEMBER, 2024**

**PER COURT :-**

1. The petitioner is defendant no.1 in R.C.S. No. 41/2012 which came to be filed for specific performance of contract. Though this defendant was duly served with summons of the Trial Court, he chose not to remain present before said Court. Therefore, order came to be passed proceeding ex-parte against him. He moved an application vide Exhibit 42 for setting aside the said order proceeding ex-parte against him. This application came to be rejected by the Trial Court dated 07/02/2015. At that stage this order was not challenged and it is only after eight months thereof application came to be filed vide Exhibit 70 for seeking permission to file written statement while setting aside order of no written statement. This application was rejected by passing impugned order dated 28/10/2015 passed below Exhibit 70.

2. Learned counsel for the petitioner submits that having regard to the nature of the suit, defendant no.1 is required to be given an opportunity to contest the suit. Learned counsel for the respondent/ original plaintiff opposed the said submission by drawing attention of the Court to the fact that the application for setting aside order of ex-parte came to be filed after three years and even thereafter no immediate steps were taken to challenge the order dated 07/02/2015 passed below Exhibit 42. This according to him the petitioner is not interested in seriously opposing the suit but he is interested prolonging the matter.

3. In the suit of specific performance, written statement of defendant no.1 is relevant. Even if the same is not filed in time, by imposing appropriate condition / cost he can be allowed to defend the suit. Though the order dated 07/02/2015 was not taken exception to immediately, however, in this petition this order was also sought to be set aside.

4. Having regard to the facts of the case and also in view of the fact that the written statement of this contesting respondent is essential for effective decision of the suit, application (Exhibit 70) deserves to be allowed, subject to cost of Rs.10,000/- payable by the defendant no.1 to the respondent/original plaintiff.

5. Learned counsel for the petitioner has drawn attention of the Court to the fact that pursuant to the order passed by this Court dated 20/01/2016, a sum of Rs.3,000/- is deposited in this Court. This amount is adjusted in the cost imposed by this Court by present order. Respondent/ plaintiff is permitted to withdraw Rs.3,000/- **along with accrued interest** from this Court. Petition/original defendant no.1 to pay additional sum of Rs.7,000/- to the respondent/plaintiff on or before next date of hearing of the Trial Court. Learned counsel for the respondent makes statement that next date of hearing is scheduled before the Trial Court on 03/02/2025.

6. In view of the above, petition stands disposed of. Impugned orders are set aside. Order proceeding ex-parte against the defendant no.1 is set aside. He is permitted to file written statement subject of compliance of above direction. Hence, suit is of more than 10 years old. The Trial Court is directed to dispose of the suit finally in accordance with law expeditiously and in any case within a period of one year from today.

(R. M. JOSHI, J.)

ssp