



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

**WRIT PETITION NO. 9259 OF 2024
WITH
WRIT PETITION NO. 9273 OF 2024**

Gangadhar Kondaji Jagtap
VERSUS
Kavita Rahul Jagtap Alias Kavita Khanderao Musale And Others

Mr. R. A. Tambe, Advocate for petitioner

CORAM : R. M. JOSHI, J.
DATE : 26th NOVEMBER, 2024

PER COURT :-

1. None for the respondents. Their absence indicates that they do not wish to oppose the petition.
2. This petition takes exception to the order passed by the trial Court refusing permission to file written statement.
3. Learned counsel for the petitioner submits that the suit filed by respondent No.1 is for partition and for separate possession of the suit properties. As such, according to him, it is in the interest of the decision of case that one of the defendants files Written Statement. As far as present petitioners are concerned, it is claimed that the petitioner

in Writ Petition No. 9259/2024 is old aged person and being suffering from ailments could not have filed written statement in time. In so far as, petitioner in Writ Petition No. 9273/2023 is concerned, It is claimed that since his father was not keeping well and as his mother expired recently during the relevant period, he could not file written statement.

3. Even assuming that there is some delay in filing of the written statement by these petitioners, having regard to the fact that it is a suit for partition, written statement of this petitioner is essential for proper and effective decision of the suit. In these circumstances, learned trial Court ought to have allowed the applications Exh. 24 and 26 filed in R.C.S.No. 196/2020 by imposing reasonable cost.

4. In view of the above, this Court finds this case fit for causing interference in the impugned order. Impugned orders are set aside. Application Exh.24 and 26 filed in R.C.S. No. 196/2020 shall stand allowed subject to payment of cost of Rs. 5,000/- by the petitioners to the plaintiff. Amount of cost be deposited/paid before the trial Court. Trial Court to ensure that the cost is received by the plaintiff before accepting written statement. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

bsj