



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

56 WRIT PETITION NO. 11822 OF 2023

M/S JAIPRAKASH BALAPRASAD LADDHA GRAIN
MERCHANT AND COMMISSION AGENT
THROUGH ITS PROPRIETOR
VERSUS
MAHESHWARI TRADERS
THROUGH ITS PROPRIETOR
SANDEEP SHIVPRASAD BHUTADA

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Advocate for Petitioner : Mr. P.S. Agrawal

Advocate for Respondent : Mr. S.S. Rathi

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CORAM : SHAILESH P. BRAHME, J.

DATE : 22nd JANUARY, 2024

PER COURT :

Heard learned counsel for the litigating sides finally.

2. The petitioner is assailing an order dated 16.08.2023, passed below Exhibit 64 rejecting his application seeking permission to file written statement. The respondent has filed suit for recovery of amount of Rs. 56,94,635/- against the petitioner.

3. It is the case of the petitioner that he received summons of the suit in the month of September, 2019. A lawyer was engaged. An appearance was caused on 04.10.2019. The petitioner was required to change lawyers. Thereafter, on couple of occasions time was sought to

file written statement but he was unable to file it. By order dated 26.02.2021, the suit was directed to be proceeded without written statement. Suit is yet to be concluded. The petitioner has sought leave to file written statement by application Exhibit 64.

4. The respondent objected application Exhibit 64. The respondent submits that the oral evidence of the respondent is over and the matter is posted for argument. The petitioner has not even cross-examined the witnesses.

5. Learned counsel for the petitioner submits that due to the circumstances beyond his control written statement could not be filed. Initially lawyers were required to be changed. Thereafter, there was unprecedented lock-down due to pandemic COVID – 19. The petitioner was in disposed of from August, 2022 to November, 2022. Learned counsel submits that impugned order is against principles of natural justice. According to him, it is an exceptional case for permitting him to file written statement though there is delay. He would further submit that learned Judge has adopted technical approach in recording findings in paragraph no. 7 of the impugned order. He would pray to allow his application in the interest of justice so that suit can be decided on merits.

6. Learned counsel for the respondent would repel the submissions of the petitioner by pointing out the sequence of the events.

According to him, the petitioner is not diligent. Before imposing of lock-down the petitioner had opportunity to file written statement. On couple of occasions time was also sought. Learned counsel has invited my attention to the discharge summary produced on record to indicate the duration of admission in the hospital. After 11.11.2022, when the petitioner was discharged, there was sufficient time to file written statement. He would submit that the conduct of the petitioner dis-entitles him to pray for any sympathy and opportunity to contest the suit.

7. It reveals from record that the petitioner has caused his appearance by engaging a lawyer on 04.10.2019. He sought time to file written statement on couple of occasions but failed to file it. He had opportunity to file written statement before unprecedented situation of pandemic COVID – 2019. He was admitted in the hospital for the period 08.11.2022 to 11.11.2022. There was sufficient time to present application seeking leave to file written statement. This Court cannot be oblivious of the fact that the petitioner was not diligent.

8. It reveals from record that respondent has filed suit for recovery of an amount of Rs. 56,94,635/- against the petitioner. Though the respondent has led oral evidence, suit has not been concluded. The petitioner had appeared in the suit by engaging lawyer. Thereafter, he was required to change lawyers. There is nothing on record to show that

the petitioner is not desirous of contesting the matter on merits. He is likely facing huge monetary liability.

9. The petitioner was in disposed of for certain period. Discharge summary produced on record cannot be doubted. From 08.11.2022 to 11.11.2022, he was an indoor patient. I am of the considered view because of the following events, the case in hand falls within the exceptional circumstances :

- i. the petitioner was required to change lawyers.
- ii. there was lock-down from March, 2020 to October, 2020 and thereafter also.
- iii. Petitioner was suffering from ailments and hospitalized.
- iv. Suit is yet to be concluded.

10. In view of ratio laid down by the Supreme Court in the matter of *Kailash Versus Nanhku and others*, **(2001) (4) SCC 480**, the petitioner has made out a case to extend one opportunity to file written statement and contest the matter on merits. Ends of justice would be met by awarding costs, considering the inconvenience suffered by the respondents. The principles of natural justice demands that the petitioner would be permitted to file written statement in the suit and by imposing certain conditions.

12. For the reasons stated above, I pass following order :

ORDER

- i. Order dated 16.08.2023 passed below Exhibit 64 passed by 2nd Joint Civil Judge Senior Division, Nanded, in RCS No. 116 of 2019, is quashed and set aside.
- ii. The petitioner shall file written statement within three weeks, if not filed earlier.
- iii. Petitioner shall pay costs of Rs. 75,000/- to the respondents within period of three weeks which shall be the condition precedent.
- iv. Learned Trial Judge shall extend opportunity of hearing to the parties.
- v. The petitioner shall furnish an undertaking before Trial Court that he shall co-operate for expeditious disposal of the suit.
- vi. Learned Trial Court shall make an endeavor to decide the suit within a period of eight months from today.
- vii. Writ Petition is allowed in above terms.

[SHAILESH P. BRAHME, J.]