



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

**WRIT PETITION NO.6231/2023**

Smt. Ratnamalabai w/o Ravindra  
Khobragade, age 62 years, Occ.  
Housewife, r/o c/o Dilip Mohat,  
In front of Kabadi Shop of Bangad,  
Chandramani Nagar, Nagpur – 27.

.....**PETITIONER**

**...V E R S U S...**

Ashwariya Sahakari Gruha Nirman  
Sanstha Maryadit, Nagpur through  
its Secretary, Smt. Shobharani  
Rajendra Nalode, age 70 years,  
Occ. Busienss, r/o Plot No. 2,  
New Rathod Lay-Out, Gorewada  
Ring Road, Nagpur.

...**RESPONDENT**

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Mr. S. A. Dutonde, Advocate for petitioner.  
Mr. S. Sufiyan, Advocate for respondent.  
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**CORAM:- ANIL L. PANSARE, J.**  
**DATED :- 10.07.2024**

**ORAL JUDGMENT**

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

Heard Mr. S. A. Dutonde, Advocate for petitioner and  
Mr. S. Sufiyan, Advocate for the respondent.

2. The challenge is to the order dated 03.07.2024 passed  
by 5<sup>th</sup> Jt. Civil Judge Senior Division, Nagpur in Special Civil Suit  
No. 643/2022, thereby rejecting the application filed by petitioner

defendant to recall the 'No Written Statement' order passed against the petitioner.

3. The learned Judge has assigned following reasons.

6. *The defendant has not filed any document to support the reason assigned in the present application. Moreover, she has also not sought permission to file the written statement nor place the written statement on record. Thus, from the conduct of the defendant, it appears that, she is only interested to protract the matter. Moreover, the statutory period for filing the written statement has been lapsed long back. Therefore,, the defendant was supposed to seek permission to file her written statement on record alongwith the present application, but she has not done so. The over all conduct of the defendant is sufficient to show that, she is just prolonging the matter. Hence, I found no substance in the present application and pass the following order."*

4. As could be seen, the Trial Court expected the petitioner to file along with the application seeking to recall the order of No Written Statement, an application to file written statement on record. Trial Court further noted that the statutory period for filing written statement has been lapsed long back.

5. As such, the Trial Court is right in expecting the petitioner to file along with the application seeking to recall the order of No Written Statement, an application to file written statement. However, the counsel for the petitioner has urged to

give one opportunity to the petitioner to put forth her case on the ground that her hard earned money is at the stake and also considering the stand taken by the respondent-plaintiff.

6. Counsel for the petitioner has invited my attention to the pleadings in the suit filed by the respondent-society. The suit is filed for cancellation of the agreement to sell. The subject matter of agreement is a plot admeasuring 1021 Sq. Ft. situated at Babulkheda, Nagpur. The agreed consideration amount is/was Rs.5,25,000/-. The pleadings indicate that the petitioner-defendant has paid entire consideration amount. The pleadings further indicate that the respondent has issued a notice dated 06.12.2017 and shown willingness to repay to the petitioner the amount of Rs.5,25,000/-.

7. Counsel for the petitioner submits that the petitioner will be happy if she gets back her amount and in that context, has urged this Court to permit the petitioner to file on record the written statement.

8. Counsel for the respondent has opposed the prayer on the ground that the learned Trial Court has assigned valid reasons for rejecting the application.

9. One may not really find fault in the order passed by the Trial Court. However, considering the controversy involved and the proposal put forth by the petitioner, I am of the considered view that petitioner should get an opportunity to file written statement, particularly when the trial has not commenced.

10. Learned counsel for the petitioner undertakes to file on record copy of written statement on or before 24.07.2024.

11. Accordingly, the order impugned is quashed and set aside subject to costs of Rs.5,000/-, to be paid to the defendant-society by 24.07.2024. Application Exh.-11 filed by the petitioner in Special Civil Suit No.643/2022, is allowed. The petitioner shall file on the record of the Trial Court written statement and counter claim, if any, by 24.07.2024.

Rule is made absolute in the above terms. No order as to costs.

**(Anil L. Pansare, J.)**

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