



- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2979 OF 2016

Municipal Council Osmanabad
Through its Chief Officer,
Shri Prashant Manoharrao Rode,
Age-47 years, Occu-Service,
R/o Municipal Quarter, Osmanabad,
Tq. and Dist. Osmanabad

-- PETITIONER

VERSUS

Dashrath s/o Dhondiba Devkate,
Age-65 years, Occu-Business,
R/o Balaji Nagar, Osmanabad

-- RESPONDENT

Mr.Vivekanand Deshmukh, Advocate for the petitioner.
Mr.J.R.Patil, Advocate for the sole respondent.

(CORAM : PRAFULLA S. KHUBALKAR, J.)

Reserved on : 01.04.2025

Pronounced on : 25.04.2025

JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. Heard the learned Advocates for the respective parties finally by consent of the parties.

2. The petitioner takes exception to the order dated

20.01.2016 on an application (Exhibit 53) for setting aside 'no written statement' in RCS No.685/2014, by which the Trial Court has refused the application of the original defendant to file the written statement considering the stage of the suit. The petitioner is original defendant and respondent is original plaintiff in the suit.

3. Petitioner to note, while issuing notices in this petition, this Court had directed the petitioner / original defendant to deposit an amount of Rs.25,000/- to show its bonafides, Accordingly, the petitioner has deposited the amount before the Trial Court.

4. The learned Advocate for petitioner Mr.Deshmukh submits that the Municipal Council, Osmanabad, which is the original defendant was served with the suit summons on 21.02.2015 and the written statement could not be filed within the stipulated period as per the provisions of Order XIII Rule 1 of the CPC. He submits that on 05.08.2015, 'no written statement order' was passed and the matter proceeded further. However, on 18.01.2016, the defendant filed an application for setting aside the 'no written statement' order by specifically pointing out that the charge of Chief Officer of the

Municipal Council was handed over to the Nayab Tahsildar, Osmanabad and on account of miscommunications about handing of charge, the written statement could not be filed within the stipulated time. He submits that the written statement was prepared and was ready for filing alongwith the application. He submits that the plaintiff's suit is for recovery of compensation and damage of Rs.3,00,000/- against the defendant/Municipal Council, Osmanabad making several allegations against the Officers of the Municipal Council and suit needs to be contested on merits. He submits that the Municipal Council has substantial defence to be put up through the written statement. However, since the written statement is not permitted to be filed on record, the defendant is deprived from contesting the suit on merits. He submits that the Trial Court has failed to consider the purport of the provisions of Order VIII Rule 1 of the CPC and has unnecessarily given importance only to the stage of the civil suit. He submits that there is no intentional delay in filing of written statement and allowing defendant to file the written statement will only enable the defendants to contest the suit on merits. He submits that the issue of alleged prejudice to the plaintiff can be taken care of by awarding appropriate costs. In support of his submissions, he relies on judgment

in the matter of Kailash Versus Nanhku and others [20025 AIR SCW 2346] and also an order dated 09.05.2022 passed by the Hon'ble Supreme Court in Civil Appeal No.3788/2022, in the matter of Bharat Kalra Vs. Raj Kishan Chabra dealing with an identical issue about provisions of Order VIII Rule 1 of C.P.C.being not mandatory.

5. As against this, the learned Advocate Mr.J.R.Patil for the sole respondent strongly opposes the petition. He submits that the petitioner/original defendant was served with the suit summons on 21.02.2015 and no written statement order was passed on 05.08.2015. He submits that the application for setting aside 'no written statement' order was filed after the plaintiff has closed his evidence and the suit was proceeded at the stage of final arguments. He submits that the impugned order is passed considering the conduct of the defendant and by referring to the provisions of Order VIII Rule 1 of the CPC. He submits that the impugned order needs no interference.

6. I have considered the rival contentions of the parties and perused the papers.

7. The application at Exhibit 53 as filed by the petitioner / original defendant in the civil suit for setting aside 'no written statement' order mentions specific reasons about charge of the Chief Officer, Municipal Council, being handed over to the Nayab Tahsildar and consequent communication issues. It is to be noted that the written statement was filed alongwith this application. By the suit in question, the plaintiff has claimed compensation against the Municipal Council alleging illegal activities and malafide action by the officials.

8. It has to be noted that in absence of its written statement being on record, the defendant did not cross examine the plaintiff's witnesses and on closure of evidence of plaintiff, the suit proceeded till stage of arguments. Thus in the peculiar facts of this case, although the suit proceeded at an advanced stage, the right of the defendant to contest the suit on merits need not be taken away. The reasons about handing over of charge of Chief Officer to Naib Tahsildar demonstrates delay on account of official compliances. There is no material to dispute the fact that charge of Chief Officer was handed over to the Naib Tahsildar. As such, the delay in filing on record the written statement, does not appear to be intentional and deliberate.

9. The position of Law is settled in the matter of Kailash (supra) that the provisions of law related to time limit for filing of written statement under order VIII Rule 1 of CPC, is directory in nature. In the instant matter, the defendant is entitled for contesting the suit on merits particularly because the plaintiff has claimed compensation against the defendant Municipal Council alleging malafide and illegal activities of the officials of the Municipal Council. It is, therefore, in the interest of justice that the defendant be given an opportunity to contest the suit on merits. In view of position of law reiterated by **Hon'ble Supreme Court in the matter of Bharat Kalra** (supra), interest of justice demands that the defendant is allowed to file its written statement by appropriately compensating the plaintiff.

10. As regards the conduct of the defendant, it has to be noted that immediately after the impugned order was passed, the defendant has filed the instant petition in which this Court, while issuing notices by order dated 15.03.2016, has directed the petitioner to deposit the sum of Rs.25,000/- in the Trial Court to show it's bonafides. By the same order, this Court had granted ad-interim relief thereby staying further proceedings of Regular Civil Suit No.685/2014. This order

indicated the intention of Court to balance the interests of both parties. The petitioner has placed on record the document (Exh.58) showing deposit of amount of Rs.25,000/- before the Trial Court. As such, although the defendant had failed to file the written statement within the stipulated time, the right of the defendant to contest the civil suit on merits need not be snatched and needs to be protected by appropriately compensating the plaintiff. Although the suit has proceeded without written statement and reached the stage of arguments, in the peculiar facts of this case, the interest of justice will be subserved by allowing the petitioner/original defendant to file its written statement and by compensating the respondent/original plaintiff by awarding appropriate costs. The amount of Rs.25,000/- deposited by the petitioner pursuant to order dated 15.03.2016 can be directed to be given to the respondent by way of costs.

11. Hence I pass the following order :-

[a] The writ petition is allowed. The impugned order dated 20.01.2016 passed by the Court of 5th Joint Civil Judge, J.D. Osmanabad on application at Exh.53, in RCS No.685/2014 is quashed and set aside.

[b] The application filed by the petitioner/original defendant vide Exh.53 in RCS No.685/2014 is allowed.

[c] The petitioner is directed to file on record the written statement before the Trial Court in RCS No.685/2014 within a period of 2 weeks. The respondent is permitted to withdraw the amount of Rs.25,000/- deposited by the petitioner before the Trial Court.

12. Rule is made absolute in the above terms.

(PRAFULLA S. KHUBALKAR, J.)