



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

WRIT PETITION NO.4465 OF 2025

Shantabai W/o. Baburao Navghare,
Age: 51 years, Occu: Service,
R/o. Dhangar Galli, Khandoba Road,
Parbhani, Tq. & Dist. Parbhani.

**....PETITIONER
(Orig. Defendant No.6)**

VERSUS

1. Kantabai W/o. Dnyanoba Lokde,
Age: 49 years, Occu: Household,
R/o. Ridaj, Tq. Jintur Dist. Parbhani **(Orig. Plaintiff)**
2. Dropatrao S/o. Munjaji Levade (Died)
3. Subhadrabai W/o. Dropatrao Levade,
Age : 68 years, Occu: Household,
R/o. Jijamata Road, Parbhani Dist. Parbhani
4. Munjaji S/o Dropatrao Levade (Died)
Through legal heirs
- 4/1. Rajamati w/o Munjaji Levade,
Age: 41 years, Occu: Household,
- 4/2. Jaishri D/o. Munjaji Levade,
Age: 24 years, Occu: Household,
R/o. Jijamata Road, Parbhani.
Tq. & Dist. Parbhani
- 4/3. Rani W/o Vithal Bande,
Age: 25 years, Occu: Household,
R/o. Kanosa, Tq. Basmath, Dist Hingoli
5. Indrajeet S/o. Munjaji Levade,
Age: 28 years, Occu: agri.
R/o. Jijamata Road, Parbhani,
Tq. & Dist. Parbhani
6. Madhukar S/o. Munjaji Levade,
Age: 26 years, Occu: Agri.
R/o. Jijamata Road, Parbhani,
Tq. & Dist. Parbhani.
7. Raju @ Ambadas S/o. Sambhaji Gore,
Age: 45 years, Occu: Agri.

R/o. Kawatha, Tq. & Dist. Nanded.

8. Gajanan S/o. Sambhaji Gore,
Age: 42 years, Occu: Agri.
R/o. Kawatha, Tq. & Dist. Nanded.

9. Maroti S/o. Sambhaji Gore,
Age: 39 years, Occu: Agri.
R/o. Kawatha, Tq. & Dist. Nanded.

....RESPONDENTS

(Res. Nos. 2 to 6 are Orig.

Defendant Nos.1 to 5 & Res.

Nos. 7 to 9 are Orig. Defendant Nos.7 to 9)

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Mr. S. K. Chavan, Advocate for petitioner

Mr. S. S. Bora, Advocate for respondent Nos.3 to 9

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CORAM : S. G. CHAPALGAONKAR, J.

DATE 21.07.2025

ORDER :-

1. The petitioner (Orig. Defendant No.6) impugns order dated 01.03.2025 passed by learned Civil Judge Junior Division, Parbhani below Exhibit-108 in Regular Civil Suit No.366 of 2012, thereby rejecting application of petitioner for recalling/setting aside 'No W.S.' order.

2. Respondent No.1 (Orig. Plaintiff) instituted Regular Civil Suit No.366 of 2012 before learned Civil Judge Junior Division, Parbhani seeking relief of partition, separate possession, declaration and perpetual injunction in respect of suit properties. On 27.07.2012, petitioner was served with suit summons. She caused her appearance through Advocate on 01.08.2012. Record indicates that despite several chances, petitioner failed to file her written statement. Ultimately, learned Trial Court passed order

dated 01.02.2013 to proceed against petitioner without written statement. The Trial Court framed issues. On 28.09.2021, plaintiff filed her evidence affidavit. While cross-examination of plaintiff was in process, respondent No.1-plaintiff filed application seeking amendment in plaint. The said application was rejected. Respondent No.1-plaintiff then filed writ petition No.12501 of 2022 before this Hon'ble Court challenging rejection of amendment application. However, said writ petition came to be dismissed on 26.06.2024. After dismissal of writ petition, Trial Court again issued notices. Petitioner received notice and then approached her Advocate, who had by then joined Government service. Petitioner then engaged another Advocate and filed application for setting aside NO W.S. order dated 01.02.2013, which came to be rejected by impugned order.

3. Mr. S. K. Chavan, learned Advocate appearing for petitioner submits that Regular Civil Suit No.366 of 2012 has been filed seeking decree of partition and separate possession. In absence of petitioner's written statement, great prejudice would be caused to her. Suit is at the stage of plaintiff's evidence. Petitioner is lady and she was not properly advised. He would, therefore, urge to recall/set aside No W.S. order dated 01.02.2013 and permit her to file written statement by allowing application Exhibit-108.

4. Per contra, Mr. Bora, learned Advocate appearing for respondent Nos.3 to 9 vehemently opposes writ petition and supports impugned order.

5. Having considered submissions advanced and on perusal of record it is apparent that petitioner had caused her appearance in suit on 01.08.2012. No W.S. order has been passed against her on 01.02.2013 after giving several chances to file written statement. Application Exhibit-108 has been filed on 11.02.2025 i.e., almost twelve (12) years after passing No W.S. order. The reason given for inordinate delay of almost 12 years is that petitioner came to know about such order on 13.01.2025, when she was served upon second Court notice. It is sought to be contended that there was communication gap between petitioner and her Advocate. Petitioner states in paragraph No.2 of writ petition that on 01.08.2012, she appeared through Advocate Kaldate, who is her nephew. The aforesaid sequence of events would show that petitioner has not tendered any explanation for not filing written statement in spite of extension granted by Trial Court till 01.02.2013 i.e., for the period of almost seven months after service of suit summons. Even from the date of No W.S order dated 01.02.2013 till 2025, no explanation is given for not filing application for setting aside No W.S. order.

6. In this background, reference can be given to judgment of this Court in case of ***Parasmal Daulatram Jain Vs. Rameshwar Rathanlal Karwa reported in 2020 (1) BomCR 435***, wherein after giving reference to judgment of Hon'ble Supreme Court in case of ***Kailas Vs. Nanhku & Others reported in (2005) 4 SCC 480***, following observations are made.

“The Supreme Court has construed the provision as directory and not mandatory. However, the Supreme Court went on to administer a note of caution that the Court may not be misunderstood as nullifying the entire force and impact and the entire life and vigour of the said provision. Thus, the Supreme Court in terms observed that ordinarily, the time schedule prescribed by Order VIII Rule 1 has to be honoured. The extension of time shall only be by way of exception and for reasons to be recorded in writing. It was further ruled in clear that unambiguous terms that in no case the defendant be permitted to seek extension of time when the Court is satisfied that it is a case of laxity or gross negligence on the part of the defendant. Undoubtedly, the Supreme Court concluded that no straight-jacket formula can be laid down except that the observance of the time schedule contemplated by Order VIII Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only.”

The aforesaid observations of this Court are specifically derived from guidelines laid down by Hon'ble Supreme Court in case of ***Kailas Vs. Nanhku & Others***, wherein caution note is added that extension of time shall only be exceptional and for reasons to be recorded in writing, howsoever brief they may be. Similarly, in case of ***R. N. Jadi Vs.***

Subhashchandra, reported in (2007) 6 SCC 420, Hon'ble Supreme Court observed as under.

“A dispensation that makes Order VIII Rule 1 directory, leaving it to the Courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the Court being conscious of the fact that even the power of the Court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned.”

In view of aforesaid exposition of law, impugned order cannot be faulted. No jurisdictional error is brought to the notice of this Court to cause interference under Article 227 of Constitution of India.

7. Hence, writ petition stands **dismissed** accordingly.

[S. G. CHAPALGAONKAR, J.]

HRJadhav