



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9399 OF 2022

Pandhari Ganpati Maske

VERSUS

State Of Maharashtra Through
Government Pleader And Others

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Mr. R. R. Deshmukh, Advocate for the Petitioner
Mr. V. M. Chate, AGP for Respondent Nos. 1 and 2
Mr. S. B. Solanke & Mr. A. S. Patel, Advocates for
Respondent Nos. 3 and 4

CORAM : R. M. JOSHI, J
DATE : OCTOBER 14, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to order passed below Exh. 84 in RCS No. 71/2013 by the Trial Court permitting the Defendant Nos. 3 and 4 to file written statement by setting aside no written statement order passed on 06.05.2022.

3. It is the case of the Petitioner/Plaintiff that the Defendant Nos. 3 and 4 were served with notice on 06.06.2013, however, failed to file written statement in time and, therefore, no written statement

order came to be passed. It is further claim of the Petitioner that in spite of lapse of about 9 years, no application was moved for setting aside the said order and application Exh. 84 came to be moved only on 06.05.2022. This application came to be opposed by Petitioner/Plaintiff. Learned Trial Court, however, allowed the said application. Hence, this Petition.

4. Learned Counsel for the Petitioner submit that after lapse of period of 9 years, the application ought not to have been entertained and allowed by the Trial Court, more particularly, in view of the fact that there is no explanation for not moving the application within time. By relying upon the judgment of Hon'ble Supreme Court in case of Nitin Mahadeo Jawale and Others vs. Bhaskar Mahadeo Mutke, 2024 SCC OnLine SC 3468, it is submitted that even period of 4 and ½ year said to be not condonable.

5. Learned Counsel for the Respondents/Original Defendant Nos. 3 and 4 supported the impugned order. He drew attention of the Court to paragraph 4 of the order impugned passed by the Trial Court, which indicates that the Plaintiff also did not pursue the said suit

for long period of time and hence, he cannot be permitted to make any grievance in that regard.

6. There cannot be any dispute made with regard to the proposition that the delay needs to be explained satisfactorily and could be condoned on consideration of the facts of each case. In so far as present case is concerned, suit filed by the Plaintiff seeks declaration that the decision given by the Tahsildar, Latur granting 12 ft. wide road from the land of Plaintiff in Block No. 189/1 situated at village Wanjarkheda, Tq. & Dist. Latur is without jurisdiction and perpetual injunction is sought restraining the Defendants from obstructing peaceful possession of the Plaintiff over the suit land. Defendant No. 3 is lady aged about 60 years in the year 2013 at the time of filing of suit and Defendant No. 4 is son of Defendant No. 3. Perusal of the suit filed by Plaintiff indicates that substantial relief has been sought against Defendants.

7. In this backdrop, Application Exh. 84 indicates about occurrence of the accident and Defendant No. 3 being injured therein. It is claimed

that the other defendant could not approach the Court on account of requirement to take care of the injured. In reply, Plaintiff has accepted the contents of the application filed by Defendant Nos. 3 and 4 in part. Similarly more than 2 years period was covered by Covid-19 pandemic. There is no dispute made with regard to the fact that the Defendant No. 3 was injured in the accident and was unable to walk. It is however claimed that he could have appeared before the Court through lawyer. It is thus clear that the reason sought to be made out by Defendants before Trial Court for delay condonation is not in dispute in respect of occurrence of accident and sustainment of injuries so also covid pandemic period.

8. Apart from this, it is pertinent to note that though it appears from the record that suit is filed in the year 2013 and it was continued up to 2022 i.e., till the filing of the application by the Defendants. As observed by learned Trial Court in paragraph 4 of the impugned order, Plaintiff is also required to be blamed for the delay in the disposal of the said suit. Learned Trial Court not only has taken into

consideration the reasons recorded in the application but also taken cognizance of the conduct of the Plaintiff. These are the peculiar facts in which the order of no written statement is set aside and the Defendants are permitted to file written statement subject to cost and contest the suit. This Court, therefore, finds no perversity in the order impugned to cause interference therein.

9. In view of above discussion, Petition stands dismissed.

(R. M. JOSHI, J.)