



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11255 OF 2025

1. USHA RAHUL JAGTAP
 2. NAVIN VIDYASAGAR CHALAK
- .. Petitioners
(Ori. Defendants)

VERSUS

- .
- NITIN VIDYASAGAR CHALAK
- .. Respondent
(Ori. Plaintiff)

...

Advocate for the Petitioners : Mr. Sushant V. Dixit
Advocate for Respondent : Mr. Vinod D. Godbharle

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 08.10.2025

ORDER:

1. Heard.
2. By the present petition, the petitioners challenge the order dated 27.02.2025, below Exhibit-50, passed by the learned Civil Judge Junior Division, Latur in Regular Civil Suit No.371 of 2020, whereby the court was pleased to dismiss the application filed by the defendants / petitioners for setting aside the no written statement order passed against them.
3. Brief facts leading to filing of the petition is that the respondent / plaintiff filed Regular Civil Suit No.371 of 2020,

seeking declaration that the Sale Deed dated 11.02.2019 executed by defendant no.2 in favour of defendant no.1 be cancelled and hold that the sale deeds are not binding on the plaintiff and, also, for perpetual injunction restraining defendant no.1 from alienating, changing the nature of suit property or transfer or creating third party interest.

4. After receipt of the summons, the defendants appeared on 11.06.2021 and sought time to file the written statement. It is contended that defendant no.2 was pursuing the matter while defendant no.1 was not. There was no communication between the defendants and their advocates and, therefore, the suit proceeded without reply and resultantly no written statement order was passed against the defendants on 22.09.2021. Defendant no.2 resides in Parbhani city for his business and after appearance in suit, the defendant no.2 was critically ill due to viral infection and doctor advised him to take complete bed rest for at least 2 months.

5. It is stated that the matter proceeded till July-2023, the defendants approached their advocates and instructed him to file applications under Order VII Rule 10 and 11 of the CPC for dismissal of the suit. The said applications were rejected on 16.02.2024. Thereafter, the defendants were intending to challenge the said order passed by the trial court on Order VII Rule 10 and 11

applications, and, thereafter, asked their advocate to take the necessary steps for filing writ petition. However, the same was not filed. Thereafter, the defendants again approached their advocate and asked him to file application for setting aside no written statement order along with written statement (Exhibit-50). The plaintiff filed his Say to the application at Exhibit-50. By the impugned order, the said application (Exhibit-50) is rejected and the same is challenged before this court.

6. The learned counsel for the petitioners / defendants submits that the petitioners were under bonafide impression that the court did not have jurisdiction to entertain the civil suit and the dispute would lie before the co-operative court. As such, the petitioners were diligently pursuing the applications filed under Order VII Rule 10 and 11 of the CPC for dismissal of the suit on the ground of jurisdiction. After rejection of the application by the trial court, the petitioner considered to file writ petition challenging the order of the trial court dismissing their application under Order VII Rule 10 and 11 of the CPC . However, the same was not proceeded with by the petitioner / defendants, as such, an application was filed to set aside the no written statement order.

7. The learned counsel for the petitioners / defendants submits that the valuable rights of the petitioners would lost in the

event the petitioners do not get the opportunity to defend the case and that costs can be imposed upon the petitioners / defendants and no written statement order can be set aside by imposing costs.

8. The learned counsel for the petitioners / defendants relies upon the Judgments of this court in the case of **Chintaman Sukhdeo Kaklij and others Vs. Shivaji Bhausabhe Gadhe and others, 2004 SCC OnLine Bom. 721** and, also, in the case of **Vimalkumar Nathmal Goenka Vs. Vinod Kumar Nathmal Goenka and others, 1998 SCC OnLine Bom. 230** and submits that the time prescribed under Order VIII Rule 10 of the CPC for filing the written statement is not mandatory and the court has discretion to permit the defendant to file written statement beyond the period of 90 days and he submits that in the instant case, the petitioners / defendants have made out a case for setting aside no written statement order and permitting the petitioners / defendants to file written statement on record.

9. The learned counsel for the petitioners also relies upon the following Judgments:

“1] Vivek Lt. R. B. Mokadam Vs. Kiran S. K. Nashine, 2007 (5) Bom. C. R. 496

2] Kaluba Madhavrao Upase Vs. Rangubai Rajabhau Atole and others, 2007 (Supp.) Bom. C. R. 641

3] Municipal Council, Hinganghat Vs. Sudhirkumar Krushnakumar Sahani, 2010 (3) Mh.L.J. 948

4] *Sambhaji and others Vs. Gangabai and others, (2009) 1 CLR 388 (SC)*

5] *Ravindralal Biharilal Srivastava Vs. Vimalkumar Santlal Srivastava and others, 2013 (6) Mh.L.J. 164*

6] *Asha namdeorao Hedao Vs. Rashmi Trilokchandra Hedao and another, 2015 (2) Bom. C. R. 435*

10. Per contra, the learned counsel appearing for the respondent / plaintiff submits that there is gross delay in applying for setting aside no written statement order and that the matter has substantially proceeded and is at the stage of arguments. The timeline for the matter is stated as under:

11.06.2021	Defendants appeared through Advocate
22.09.2021	No written statement order passed
27.11.2021	Examination in Chief of PW-1 filed
14.03.2022	No cross order passed
22.11.2022	Examination in Chief of PW-2 filed
21.12.2022	No cross
01.04.2023	Evidence of plaintiff closed-purshis Arguments of plaintiff heard
10.07.2023	Applications under Order VII Rule 11 CPC filed Exhibit-39 and Exhibit-40
16.02.2024	Both applications rejected
25.10.2024	Application to set aside the no written statement order is filed
27.02.2025	Application is rejected

11. The learned counsel for the respondent / plaintiff relies upon the Judgments passed by this court in the case of **Bhaskar Mahadeo Mutke Vs. Nitin Mahadeo Jawale and others, Writ Petition No.15056 of 2019, dated 12.04.2024** and, also, in the case

of **Suryakant Bhagwandas Sharma Vs. Radhakishan Khushaldas Chawla and others, Writ Petition No.3255 of 2025, dated 15.07.2025.**

12. Considered the rival submissions. The law on the subject i.e. the time for filing of the written statement prescribed under VIII Rule 1 of the CPC is directory and not mandatory and for justifiable reasons made out for non filing of the written statement within time the same can be also filed beyond the period stipulated. However, the Hon'ble Supreme Court in the case of **Kailash Vs. Nanhku and others, (2005) 4 SCC 480** has particularly observed at paragraphs no.41, 42, 43, 44 and 45, as under:

“41. Considering the object and purpose behind enacting Rule 1 of Order 8 in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact – the entire life and vigour – of the provision. The delaying tactics adopted by the defendants in law courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidate may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may lose the battle at the end. Therefore, the judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provisions may not ordinarily be shown indulgence.

42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

43. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the Court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was founded on grounds which do exist.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, shall 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 or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of

time just for the asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

45. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order 8 Rule 1, though couched in mandatory form, is directory being a provision in the domain of procedural law.”

13. The Hon’ble Supreme Court has held that it is the duty of the defendant when it fails to file written statement in time, to plead and explain satisfactorily to the court the valid reason for non filing of the written statement within 90 days.

14. In the instant case, if we see the timeline, the defendants has appeared on 11.06.2021, no written statement order is passed on 22.09.2021, Examination-in-Chief of PW-1 is filed on 27.11.2021, no cross order is passed on 14.03.2022, examination-in-chief of PW-2 is filed on 22.11.2022, no cross order against PW-2 is passed on 21.12.2022, evidence of plaintiff closed purshis filed on 01.04.2023 and the arguments of the plaintiff were heard. However, on 10.07.2023, applications under Order VII Rule 10 and 11 of the CPC were filed and, on 16.02.2024, both the application were rejected. On 25.10.2024 application is filed to set aside the no written statement order and on 27.02.2025 the said application is also rejected.

15. In this factual situation it cannot be said that the defendants were diligent in filing written statement, when the defendants were represented by the advocate. Even, the applications under Order VII Rule 11 of the CPC are filed on 10.07.2023 i.e. after the plaintiff had closed his evidence, as such, submissions of the learned counsel for the petitioners / defendants that the defendants were diligently pursuing the applications under Order VII Rule 10 and 11 of the CPC and, as such, failed to file the written statement cannot be accepted. There is gross delay in applying for setting aside no written statement order.

16. Considering the same, no case is made out to interfere with the impugned order.

17. The Writ Petition stands dismissed.

[ARUN R. PEDNEKER, J.]

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