



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13552 OF 2024

Ganpat s/o Tukaram Mate,
Age : 53 years, Occ. Agri.,
R/o Dolsane, Tq. Sangamner,
Dist. Ahmednagar

... PETITIONER

VERSUS

1. Dinkar s/o Thaka Dhawle,
Age : 70 years, Occ. Agri.,
2. Maruti s/o Thaka Dhawle,
Age : 60 years, Occ. Agri.,
3. Tulshiram Thaka Dhawle,
Age : 55 years, Occ. Agri.,

All R/o Dolsana, Tq. Sangamner,
Dist. Ahmednagar

... RESPONDENTS

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- Mr. Vijay Shivaji Wakale, Advocate for the Petitioner
 - Mr. S. S. Dixit, Advocate for Respondent Nos. 1 to 3
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CORAM : ROHIT W. JOSHI, J.
DATE : 10th JUNE, 2025

JUDGMENT:

1. The petitioner takes exception to the order dated 15.10.2024 passed by the Joint Civil Judge Junior Division, Sangamner in R.C.S. No. 882/2019 rejecting application filed by the petitioner - original defendant seeking permission to file written statement on record.

2. Perusal of the application will demonstrate that according to the defendant, after the application for grant of temporary injunction was rejected by the learned Trial Court, plaintiffs had assured the defendant - petitioner that they will withdraw the suit. It is stated that relying on the assurance given by the plaintiffs, the defendant did not contest the matter diligently and also did not file the written statement. The application was filed when the suit was posted for final arguments. The said application is rejected by the learned Trial Court vide order dated 15.10.2024, which is impugned in the present petition.

3. The petitioner was served with the suit summons and had entered appearance in the suit on 19.08.2019. Since the petitioner did not file written statement within the stipulated period, order to proceed without written statement of the petitioner was passed by the learned Trial Court on 22.11.2019. The plaintiffs filed an affidavit of examination-in-chief on 27.02.2020 vide '**Exhibit 11**'. The defendant did not cross-examine the plaintiffs and an order to proceed without cross-examination came to be passed by the learned Trial Court on 13.09.2023. It would be pertinent to mention that the plaintiffs had filed an application for measurement of the suit property to Court Commissioner, which was allowed vide order dated 14.09.2021 and thereafter, Court Commissioner had carried out measurement of the suit

property on 01.09.2022. The petitioner was present at the time of measurement. The plaintiffs had examined the Tahsil Inspector of Land Record (TILR) and had closed the evidence by filing pursis. Order to proceed without cross-examination of TILR was passed on 05.01.2024. The matter was posted for final arguments on 15.07.2024, on which date petitioner - defendant engaged another advocate in the matter. He filed an application seeking adjournment for advancing final argument. Thereafter, the petitioner filed application dated 23.09.2024 seeking permission to file written statement.

4. Perusal of the order passed by the learned Trial Court particularly paragraph 9 and 10 thereof, will demonstrate that the petitioner was aware of the fact that the plaintiffs were prosecuting the suit. The learned Trial Court referred to the dates, when the advocate for the petitioner - defendant appeared in the matter intermittently. It is also observed that the measurement of suit property was carried out on 01.09.2022 in the presence of the petitioner - defendant. The learned Trial Court has rightly observed that the petitioner - defendant was keeping a track of the matter discreetly and filed the application by engaging another advocate at the stage, when the matter was posted for final argument. The learned counsel for respondents - plaintiffs states that in fact the plaintiffs had advanced final argument in the matter and an order to proceed without argument of the defendant – petitioner was

also passed by the learned Trial Court. The learned Trial Court has also observed that the application was filed at the stage, when the suit was to be posted for passing the judgment. The conduct of the defendant - petitioner speaks for itself.

5. There is a delay of around further 1800 days in filing the application seeking permission to file written statement by recalling 'No WS' order. The perusal of record of the case will indicate that the petitioner has willfully avoided to file written statement in the proceeding and was all the while keeping track of the matter. The explanation offered by the petitioner that assurance was given by the respondents to withdraw the suit does not appeal to reason. The progress of the suit which was being monitored by the petitioner and most importantly measurement by Court Commissioner in the presence of petitioner are sufficient to belie the explanation. The learned Trial Court has recorded elaborate reasons for rejecting the application filed by the petitioner seeking permission to file written statement. The reasons recorded by the learned Trial Court are based on record of the case. The reasons recorded as just and proper.

6. The learned advocate for the petitioner placed reliance on order dated 09.05.2022 by the Hon'ble Supreme Court in the matter of

Bharat Kalra Vs. Raj Kishan Chabra reported in **Civil Appeal No. 3788 of 2022 (@SLP(C) No. 63 of 2022**, to contend that permission to file written statement ought to have been granted by imposing appropriate costs. The said order merely records that provision or order 8, Rule 1 is directory and not mandatory. In the said, there was a delay of 193 days in filing written statement. The facts of the present case as recorded above are completely different. The order, therefore, does not help the case of the petitioner. As against this, the learned counsel for respondents has rightly placed reliance on the following decisions :

- (i) ***Atcom Technologies Limited Vs. Y. A. Chunwala and Co. and Ors.*** reported in **2019 (2) Mh.L.J. 26**
- (ii) ***Bhaskar Mahadeo Mutke Vs. Nitin Mahadeo Jawale and Ors.*** decided on 12.04.2024 by this Court in ***Writ Petition No. 15056 of 2019***
- (iii) ***Ningappa Maruti Kumbhar and Ors. Vs. Iswar Kalappa Madkari and Ors.*** decided on 15.10.2019 by High Court of Bombay in ***Writ Petition No. 10239 of 2017***
- (iv) ***Desh Raj Vs. Balkishan (D) through Proposed L.R.*** reported in ***AIR 2020 SC 621***

7. Abovementioned decisions lay down that delay caused in filing writ petition cannot be condoned merely asking and normally the

written statement should be filed within the stipulated period of 30 days and for reasons to be recorded, period can be extended up to 90 days. In extraordinary circumstances only period can be extended beyond 90 days.

8. In view of the aforesaid, the impugned order does not warrant any interference. The petition is dismissed with no order as to costs.

[ROHIT W. JOSHI]
JUDGE