

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION No.14692 OF 2023

Sau. Sharda Chandrakant Loya,
Age: 59 years, Occu: Household
R/o. Shraddha Sankul, Old Gangapur Road,
Nashik, Tq. & Dist. Nashik.

..Petitioner

Versus

1. Shyam Dharmendra Zavar,
Age: 27 years, Occu: Business,
R/o. Flat no. A-5, 2nd Floor,
Trinit Park, Mangaldham Society
Near Eklavya College, Kothrud
Pune-411 038
 2. Sau. Sharmila Vinay Zavar,
Age: 51 years, Occu: Household
R/o. 'Yashodhan' Flat no. 56,
United Western Society,
Karvenagar, Pune-520000
 3. Pankaj Shriram Zavar,
Age: 50 years, occu: Business,
R/o. House no. 411, Jaykisanwadi,
Jalgaon, Tq. & Dist. Jalgaon.
 4. Smt. Pushpa Shriram Zavar,
Age: 74 years, Occu: Household
R/o. House no. 411, Jaykisanwadi,
Jalgaon, Tq. & Dist. Jalgaon.
 5. Vinay Shriram Zavar,
Age: 54 years, Occu: Business,
R/o. Flat no. 56, United Western Society
Karvenagar, Pune-52.
- ..Respondents

...

Advocate for the Petitioner : Mr. G.V. Wani
Advocate for Respondent Nos.1 & 2 : Mr. J.V. Patil
Advocate for Respondent Nos.3 & 4 : Mr. A.S. Sawant
Advocate for Respondent No.5 : Mr. B.S. Dhawale

...

CORAM : S. G. CHAPALGAONKAR, J.

DATED : JULY 10, 2025

ORDER :-

1. Present petition takes exception to order dated 05.01.2023 passed by learned Civil Judge, Senior Division, Jalgaon in Special Civil Suit No.122 of 2018 below Exhibit-119, whereby the prayer of petitioner for setting aside “no written statement” order dated 01.09.2021 has been declined by Trial Court.

2. Mr. G.V. Wani, learned advocate appearing for petitioner submits that petitioner is original defendant no.4 in Special Civil Suit No.122 of 2018. Respondent nos.1 and 2 instituted said suit seeking relief of partition, possession and perpetual injunction in respect of suit property bearing CTS No.2112/10K/2A and CTS No.2112/10K/2B. The petitioner was served with suit summons. She filed her appearance through an advocate. However on 01.09.2021, the order of “no written statement” was passed against her during pandemic period. The petitioner had no knowledge of said order. Meanwhile, the advocate engaged by her withdrew his appearance. Later on, Advocate Shri V.P. Keskar, who was representing petitioner in another suit came across “no written statement” order passed against petitioner in present suit and advised her to take necessary steps. Accordingly, application for setting aside “no written statement” order

was moved vide Exhibit-119, however, same has been rejected vide impugned order.

3. Mr. Wani, learned advocate appearing for petitioner submits that suit is filed for relief of partition and separate possession. The valuable right of petitioner as regards to immovable property is subject matter. In absence of written statement, great prejudice would be caused to petitioner. He points out that suit has just reached to evidence stage and cross-examination of plaintiffs is yet to be commenced. Practically, trial is not yet started. In that view of matter, he urges to set aside impugned order and issue direction for acceptance of written statement. In support of his contention, he relies upon observations of this Court in case of **Ravindralal Biharilal Srivastava Vs. Vimalkumar Santlal Srivastava and Others**¹.

4. Per contra, Mr. Patil, learned advocate appearing for respondent nos.1 and 2 vehemently opposed the prayers of petition. He would submit that petitioner had caused appearance in suit through an advocate. From 25.03.2019 to 01.09.2021, the suit was posted on board for written statement for eleven times. However, petitioner failed to take opportunity and file written statement. Ultimately, the order of no written statement was passed. Mr. Patil would further invite attention of this Court to reasons mentioned by petitioner in her application for setting aside no written statement order and submits that petitioner herself admits that she had not

¹ 2013 (6) Mh.L.J. 164

given necessary instructions to the advocate. In result, no written statement is rightly passed. According to Mr. Patil, lethargic approach of petitioner invited the order of no written statement. He would further submit that although the impugned order is passed on 01.09.2021, the application for setting aside the same is belatedly filed on 05.08.2023 without explanation for further delay of 23 months. According to Mr. Patil, in light of scheme under Order VIII of Civil Procedure Code, the time of ninety days is provided for filing written statement. In present case, the petitioner could not file her written statement for two years and even after passing no written statement order, filed belated application for setting aside same after two years. He would therefore urge that allowing petitioner to file written statement would amount to giving premium for her laxity and gross negligence. In support of his contentions, he relies upon the judgment of this Court in case of **Parasmal Daulatram Jain Vs. Rameshwar Rathanlal Karwa²**, **Milind Arvind Killedar Vs. Prashant Mane and Ors³** and **Gunwantiben Kishorchandra Shan and Ors Vs. Smt. Manjulaben Indukumar Ghiya** in Writ Petition No.7061 of 2019 dated 24.09.2020.

5. Having considered submissions advanced, there cannot be dispute as to preposition of law espoused in citations relied by respective parties. However, it is well settled that discretion of Court

2 2020 (1) Bom CR 435

3 2018 (3) Mh.L.J. 115

to accept written statement is not taken away. In appropriate cases, considering nature of suit claim and attending circumstances, Court can exercise discretion to accept written statement filed beyond prescribed period contemplated under Order VIII Rule 1 of Civil Procedure Code. In present case, the suit is filed for partition and separate possession of suit properties. The plaintiff is relative of petitioner/defendant no.4 from paternal side. The dispute pertains to house property situated within the limits of Municipal Corporation of Jalgaon apart from agricultural lands. The relationship between plaintiff and defendant is accepted.

6. In such a case, all the parties are required to be given fair opportunity to put up their case. The petitioner caused her appearance in pursuance to suit summons. However, fact remains that during subsistence of COVID situation, possibility cannot be ruled out that she was prevented from providing necessary instructions to her advocate. Eventually, no written statement order dated 01.09.2021 was passed. It is also possible that there was communication gap between petitioner and her advocate. It is also the contention of petitioner that the advocate engaged by her withdrawn his appearance and plaintiff came to know about no written statement order through Advocate Mr. V.P. Keskar, who was representing her in other suit. The reasons as given in application, although cryptic, however, cannot be discarded in absence of contra

material. It is informed to this Court that suit is at the stage of evidence and plaintiff has tendered evidence affidavit. But, cross-examination is yet to start. In this background, looking to the nature of suit and stage of proceeding, if petitioner's written statement is taken on record, no prejudice would be caused to respondents/plaintiffs. However, in facts and circumstances of the case, it is necessary to compensate respondents/plaintiffs by appropriate cost. In result, following order is passed :

ORDER

- (i) Writ Petition is allowed in terms of prayer clause (B), subject to condition that petitioner deposits cost of Rs.25,000/- in the Court of Civil Judge, Senior Division, Jalgaon within a period of four weeks from today.
- (ii) Subject to deposit of cost, written statement filed by petitioner be taken on record.
- (iii) Since the suit is pending from 2018, parties to co-operate for early disposal of suit.
- (iv) The learned Civil Judge, Senior Division, Jalgaon shall endeavour to decide the suit within a period of one year from the date of this order.
- (v) Writ Petition stands disposed of in aforesaid terms.

(S.G. CHAPALGAONKAR, J.)