



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

946 WRIT PETITION NO. 15251 OF 2023

Satyanaryan Tolaram Agrawal,
Age: 77 years, Occ.: Business,
R/o. Plot No.20, Manas, Behind Mariya,
eye Hospital, Govind Nagar, Aurangabad

....Petitioner

VERSUS

1. Ghanshamdas Bansilal Panch,
Age: 87 years, Occ.: Business,
R/o. H. No.1-21-10, Swami Dayanand Road,
Jalna.
2. Nandkishor Ghanshamdas Panch,
Age: 64 years, Occu.: Business,
R/o. H. No.1-21-10, Swami Dayanand Road,
Jalna.
3. Sunilkumar Ghanshamdas Panch,
Age: 52 years, Occ.: Business,
R/o. H. No.1-21-10, Swami Dayanand Road,
Jalna.
4. Shree Gurukrupa Industries,
A partnership firm through its partner,
Ghanshamdas Bansilal Panch,
Plot No.C-31 to C-34,
Jaina Industrial Area, Jalna.
5. Vishnu S/o Nandkishor Panch,
Age: 34 years, Occu: Business,
R/o. Balaji Galli, Sadar Bazar, Jalna.

.....Respondents

Appearance :

Mr. N. S. Jaju, Advocate for the Petitioner.

Mr. S. V. Dixit, Advocate for Respondent Nos.1 to 5.

CORAM : NEERAJ P. DHOTE, J.
RESERVED ON : 4th November, 2025
PRONOUNCED ON : 10th November, 2025

FINAL ORDER :

1. Heard the learned Advocate for the Petitioner and learned Advocate for the Respondents. Perused the papers on record.
2. By the present Writ Petition under Article 227 of the Constitution of India, the Petitioner has raised challenge to the common order dated 24/07/2023, passed by the learned Civil Judge, Senior Division, Jalna, allowing the Applications below Exhibit – 12 and Exhibit – 19 for setting aside the order to proceed ex-parte against the Defendants, and for permission to file Written Statement, respectively.
3. The Petitioner is the Original Plaintiff. He filed Special Civil Suit No.21/2021 for specific performance of an agreement. Summons were issued to the Defendants, which came to be returned unserved with an endorsement that, the house was locked. Subsequently, summons were re-issued by Registered Post, which were returned with the endorsement 'Refused'. The learned Trial Court on 27/09/2021 passed the order to proceed ex-parte against the Defendants. The Defendants appeared through their learned Advocate and sought time to file *Vakalatnama*, and thereafter preferred the Applications below Exhibits – 12 and 19 on 12/09/2022 and 07/11/2022, respectively. The Petitioner filed his *Say* to both the said

Applications. By the impugned order, both the Applications came to be allowed.

4. It is submitted by the learned Advocate for the Petitioner that, the provision of Order VIII Rule 1 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] provides the time of thirty days to file the Written Statement. The Order XXX Rule 3 of CPC provides the manner of service on the partnership firms. The service on one partner is sufficient. The Defendants were having conscious knowledge of the suit. Seeking adjournment to engage an Advocate itself shows that, the Defendants were having knowledge about the suit. However, by making false contention, the above-referred Applications came to be filed. Pursuant to the provisions of Sub-rule 5 of Rule 9 of Order V of CPC, refusal to accept the summons means duly served. The learned Trial Court, without assigning cogent reasons, allowed both the Applications. The impugned order is not in consonance with law and the same be set aside. In support of his submissions, he relied on the following Judgments :-

- [a] **ATCOM Technologies Limited Vs. Y. A. Chunawala and Company and Others; (2018) 6 SCC 639 ;**
- [b] **Sudhikumar Krishnalal Sahani Vs. Nagar Parishad / Nagar Palika / Municipal Council, Hinganghat & Anr.; 2009 (11) LJSOFT 139 ;**
- [c] **Taramati Bhagwandas Vithlani Vs. Navjivan Gulab Gaikwad & Ors.; 2006 (4) Bom. C. R. 565 ;**

[d] **M/s. Polytronic Corporation Vs. M/s. Tukaram S. Loliencar, in Appeal From Order No.100/2008 dated 01/04/2009 ;**

5. It is submitted by the learned Advocate for the Respondents that, the Application below Exhibit – 12 was filed on 12/09/2022 and the Application below Exhibit – 19 was filed on 07/11/2022 by the Defendants. The earlier Application for adjournment was filed by Defendant No.2 and not by all the Defendants. The postal endorsement ‘refused’ was wrong endorsement, as the wife of one of the Defendants was hospitalized and the house was locked. The summons could not be served as the house was found locked. There was no delay in preferring the Applications by the Defendants. The time has to be counted from the date of passing of the ex-parte order. By challenging the impugned order, the Petitioner has further delayed the matter, thereby frustrating the object of Order VIII Rule 1 of CPC. If the Petition is allowed, the Defendants would be precluded from putting forth their defence in the suit, and for proper adjudication of the suit, the Writ Statement is necessary and the same has been filed along with the Application. No prejudice would cause to the Plaintiff by the impugned order; whereas prejudice would cause to the Defendants if the impugned order is set aside. The proper reasons are assigned in the impugned order, and therefore, the Writ Petition be dismissed. In support of his submissions, he relied on the following Judgments :

[a] **Sambhaji and Others Vs. Gangabai and Others; (2008) 17 SCC 117 ;**

[b] **Municipal Council, Hinganghat, Dist. Wardha and Another Vs. Suhirkumar Krushnakumar Sahani; 2010 (3) Mh.L.J. 948 ;**

6. The impugned order is passed in the exercise of powers under Order VIII Rule 1 of CPC. The provision of Order VIII Rule 1 of CPC provides that, *the Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence. The proviso provides that, where the Defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.* There can be no dispute in respect of the other provisions of CPC relied upon by the learned Advocate for the Petitioner.

7. From the above-referred Judgments relied upon by both the sides, it is clear that, it is the settled position under the law that, the said provision under Order VIII Rule 1 of CPC is directory in nature. The above-referred Judgments are on the facts and circumstances in the respective matters; however, the principle remains the same.

8. The cause title of the Complaint shows that, the partnership firm is impleaded as Defendant No.4. It prima facie appears that, the other Defendants are impleaded as the party in the individual capacity by name. Therefore, prima facie, the provisions of Order XXX Rule 3 of CPC will have no Application for considering the issue involved.

9. The main thrust of the Plaintiff, as seen from the replies filed to the Applications is that, the reason in respect of knowledge of the Suit on 22/07/2022, was false as Defendant No.2 had, prior to that date, applied for time to engage an Advocate in the Suit. The copies of *Roznamas* placed on record, prima facie, support the said contention of the Plaintiff to the extent of Defendant No.2 only. There are no observations on that aspects by the learned Trial Court. There would again be the question whether the knowledge of Suit to Defendant No.2, would be construed as the knowledge of the Suit to all the other Defendants. The Applications decided by the impugned order were filed by all the Defendants. Be that as it may.

10. The impugned order shows that, the same is passed after hearing both the sides and perusing the papers on record. The observations made in the impugned order show that, the medical papers of the wife of Defendant No.2 were before the learned Trial Court. The learned Trial Court took note that, along with the Applications, the Written Statement was filed. The learned Trial Court observed that, looking to the nature of Suit, no prejudice would cause to the Plaintiff if the Defendants were permitted to file the Written Statement, whereas it will facilitate to decide the Suit on merits. The impugned order is a speaking order. The learned Trial Court has recorded the reasons for allowing the Applications. Considering the impugned order in light of the principles enumerated in the above-referred Judgments cited by both the sides, no interference is warranted in the impugned order. Hence,

the following order :-

ORDER

- [I] The Writ Petition is dismissed.
- [II] The parties would be at liberty to request the learned Trial Court to expedite the Special Suit. If such request is made, the same be considered by the learned Trial Court.

[NEERAJ P. DHOTE, J.]

Sameer/November-2025