

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9625 OF 2023

Pradeep Dattatraya Shinde

...Petitioner

VS.

Amar Marutirao Pudale and Others

...Respondents

VISHAL
SUBHASH
PAREKAR

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VISHAL
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Mr. Hrishikesh Shinde, for the Petitioner.

Mr. Prasad Kulkarni a/w. Mr. Nakul Shukla, for Respondent No. 1.

Ms. Tanvi Nandgaonkar a/w. Mr. Ravindra Suryawanshi, Archi
Bhatt i/b Bar & Brief Attorneys, for Respondent Nos. 2, 3, 5 and 6.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 18, 2025

P.C:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 26th April, 2023 passed by the learned Civil Judge, Solapur whereby the application preferred by the petitioner/defendant No. 2 to set aside the 'no written statement' order dated 6th August, 2022 came to be rejected.
3. The respondent Nos. 2 to 6 have instituted a suit for declaration that the Deed captioned "Isara Pavti" dated 16th April, 2023 executed by defendant No. 2 in favour of defendant No. 1 is not an Agreement for Sale but it is a document executed by way of security for the loan advanced to defendant No. 2 by defendant No. 1 and for the consequential relief of injunction.
4. The defendant No. 2 was served with the suit summons.

Defendant No. 2 entered appearance on 26th October, 2018. As the defendant No. 2 failed to file the written statement, 'no written statement' order came to be passed against defendant No. 2. The suit proceeded to the stage of final argument.

5. The petitioner preferred an application to set aside the 'no written statement' order. By the impugned order, the learned Civil Judge was persuaded to reject the application observing, inter alia, that defendant No. 2 has approached the Court to set aside the 'no written statement' order after four and half years when the suit was at the stage of final argument. The reasons ascribed by defendant No. 2 do not constitute a sufficient cause or the exceptional circumstance to condone the delay in filing the written statement.

6. Mr. Shinde, the learned counsel for the petitioner, submitted that the petitioner was prevented by a genuine cause from appearing before the Court and filing the written statement. The real contest is between defendant No. 1 and defendant No. 2. Defendant No. 1 who is a politically influential person has threatened defendant No. 2 and, therefore, defendant No. 2 was constrained to leave Solapur. Covid-19 pandemic intervened and, therefore, there was a delay in seeking setting aside of the 'no written statement' order.

7. Mr. Kulkarni, learned counsel for the respondent No. 1 resisted the prayer. It was submitted that the application was misconceived. A bare prayer to set aside 'no written statement' order was made without seeking condonation of delay. Therefore, the learned Civil Judge was justified in rejecting the application for setting aside the 'no written statement' order.

8. I have perused the averments in the application.

9. Defendant No. 2 has contended that defendant No. 1 had threatened him and, therefore, he was constrained to leave Solapur. This seems to be the principal cause assigned for not filing written statement within the stipulated period and for the delay in seeking aside 'no written statement' order.

10. Mr. Shinde invited attention of the Court to a complaint (Exh.C) which was purportedly lodged by Pravin Shinde, the son of defendant No. 2, about the alleged threat given by defendant No. 1 and the documents having been fraudulently got executed by defendant No. 1 taking undue advantage of the addiction of defendant No. 2. Mr. Shinde further submitted that the provisions contained in Order VIII Rule 1 are directory. Reliance was sought to be placed on a judgment of the Supreme Court in the case of **Kailash vs. Nanhku and Ors.**¹.

11. I have given anxious consideration to the rival contentions

¹ (2005) s SCC 480.

canvassed by the learned counsel for the parties.

12. Undoubtedly, the provision is directory. However, it is incumbent upon the defendant who seeks extension of time to file written statement to ascribe a justifiable cause. In the case at hand, the reasons ascribed by defendant No. 2 appear to be make believe. The complaint by the son of defendant No. 2, on which reliance was placed by Mr. Shinde, was addressed on 17th August, 2018. Defendant, in fact, entered appearance before the Civil Court on 28th October, 2018. This fact dismantles the case of the defendant No. 2 that on account of threats given by defendant No. 1, he could not appear before the Court.

13. Though the provision has been construed to be directory, the Supreme Court has cautioned against construing the said provision in such fashion as would erode the legislative mandate. A useful reference can be made to a three Judge Bench judgment of the Supreme Court in the case of **M/s. R.N. Jadi & Brothers & Ors. vs Subhashchandra²** wherein the judgment in the case of **Kailash** (supra) was clarified as under:

24} It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in **Kailash vs. Nankhu and others** (2005 (4) SCC 480) which held that the provision was directory and not mandatory But there could be

2 AIR 2007 SC 2571

situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was in that context that in *Kailash vs. Nankhu and others* (supra) it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. *Kailash* is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

25} A dispensation that makes Order VIII Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in *ALLEN vs. SIR ALFRED McALPINE & SONS* [(1968) 1 All E.R. 543] that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?

14. In the case at hand, the delay is inordinate. The reasons ascribed in the application seeking condonation of delay in filing written statement do not appeal to human credulity. The learned Civil Judge thus committed no error in declining to exercise the discretion to set aside the “No written statement” Order.

15. The petition thus stands dismissed.

(N. J. JAMADAR, J.)