



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.908/2022
Vinay V Smt. Shubhangi and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Tribunal or Judge's orders

Mr. B.N. Mohta, Advocate for petitioner.
Mr. S.S. Shahane, Advocate for resp. no. 1 to 4.

CORAM : R.M. Joshi, J.
DATE : 16-06-2025.

By consent of both the sides, heard finally at the stage of admission.

2. This petition takes exception to the order passed Below Exhibit-19 in Spl.C.S. No.473/2017 on 11-01-2022 filed under Order 8 Rule 9 of the Code of Civil Procedure, seeking permission to file rejoinder. Learned trial Court rejected the application. Hence, this petition.

3. It is not in dispute that an application came to be moved at Exhibit-19 by plaintiff seeking permission to file rejoinder to the written statement filed by the defendant. Perusal of the order indicates that the application is rejected essentially on the ground that intention of the plaintiff appears to protract the matter.

4. There is no dispute made with regard to the position of law by Counsel for both sides that under provisions of Order 8 Rule 9 of CPC in appropriate cases with leave of the Court rejoinder can be filed.

5. Learned Counsel for the petitioner submits that learned trial Court has failed to take into consideration the issue as to whether this is a case wherein such leave needs to be granted or not. The order impugned does not reflect any reason recorded for refusal of leave on merit of rejoinder.

6. Learned Counsel for the respondent/original defendant submits that the application for seeking permission to file rejoinder has been filed after a year of filing of the written statement and that too after framing of the issues by the trial Court. It is his submission that the time limits are proscribed for the filing pleadings, and there is no reason to exclude subsequent pleadings from such time limits.

7. At the outset it is to be recorded that, the trial Court when such application is filed under Order 8 Rule 9 of CPC for subsequent pleadings, and the leave is sought, it is incumbent on the part of the Court to record reason for granting or refusing the

leave on considering its merits. Perusal of impugned order, here in this case records only reason that this is an attempt on the part of the plaintiff to protract the matter. For this sole reason there cannot be a rejection of the application, as sough to be done by the trial Court.

8. Even for the sake of arguments it is accepted that the period of limitation applicable to filing of written statement could be made applicable for the subsequent pleading under Order 8 Rule 9 of CPC, there is no finding recorded that the application has been filed beyond limitation. Learned trial Court simply stating, filing of application to be an attempt to protract matter, cannot be construed as decision on the point of bar of limitation. Needless to say that the delay in filing of written statement is done liberally. This Court while exercising the writ jurisdiction to ascertain correctness of order cannot be called upon to record reasons for first time on merit of application. Since no reasons are recorded for rejecting the leave, this Court is left with no other option but to relegate the matter back to the trial Court for deciding application Exhibit-19 afresh in accordance with the law.

9. Accordingly, petition stands allowed. Impugned order is set aside. It is expected that trial Court shall undertake the said exercise as early as possible and decide the application as per law.

(R.M. Joshi, J.)