



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1012 OF 2025

(Watu s/o Rakhdu Dademal Vs. Smt. Jagruti w/o Mahesh Wakde & Ors.)

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

Court's or Judge's orders.

Mr. P.K. Mishra, Counsel for the petitioner.

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CORAM : ANIL L. PANSARE, J.
MARCH 19, 2025

On 25/2/2025, following order was
passed :

"1. The challenge is to the order dated 16/01/2025 passed by the Trial Court rejecting the application filed by the defendant to file written statement. The summons was served on 30/04/2024. It appears that petitioner failed to file written statement within stipulated time.

2. The counsel for petitioner submits that since the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 was pending, the petitioner was under bonafide impression that the requirement of filing written statement will arise only upon the decision on the said application. The petitioner has ultimately filed application on 19/12/2024 seeking permission to file written statement, which came to be rejected on the count that the reasons assigned do not appear to be cogent and real.

3. It appears that the petitioner was little negligent in filing written statement. However, denial thereof is harsh step, which is akin to denial of justice.

4. Issue notice to the respondents, returnable after three weeks. Issue notice to the respondents on interim relief also.

5. The petitioner, however shall deposit amount of Rs.10,000/- in this Court.

6. The petitioner may serve the respondents through all permissible modes

including service by speed post and file affidavit of service.

7. The petitioner may serve the respondents through counsel appearing before the Trial Court and file affidavit also.”

2] Mr. A.P. Thakare, learned Counsel, appears for the respondents. He submits that though he has been instructed to appear in the matter, the formal Vakalatnama is not filed. He accordingly seeks time.

3] Time is granted to file Vakalatnama, which may be filed in due course.

4] As regards merits of the petition, as noted in order dated 25/2/2025, the petitioner was found to be little negligent in filing written statement, may be because the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short “the Code”), was pending, and accordingly the petitioner thought that he will be required to file written statement only if the decision goes against him.

5] The learned Counsel for the respondents submits that there was no reason for the petitioner to wait for order upon application filed by him under Order VII Rule 11 of the Code. He accordingly submits that the petition should be dismissed.

6] True it is that the petitioner could have, along with application under Order VII Rule 11 of the Code, filed written statement, however, delay in filing written statement is not intentional, but appears to be *bona fide*.

7] In the circumstances, the purpose will be served if the petitioner is allowed to file written statement by putting him to some cost. Hence, following order :

ORDER

I] The petition is allowed subject to cost of Rs.10,000/- to be paid by the petitioner to the respondents.

II] Order dated 16/1/2025 passed by the Civil Judge Junior Division, Pawni, in Regular Civil Suit No. 11/2024, is quashed and set aside.

III] The amount of Rs.10,000/- has been deposited by the petitioner before this Court in terms of order dated 25/2/2025. The same be paid to the respondents upon making formal application.

IV] The written statement filed by the petitioner shall be taken on record by the trial Court and proceed further in accordance with law.

V] The petition is disposed of in above terms.

(ANIL L. PANSARE, J.)

Sumit