



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

WRIT PETITION NO.773/2025

Chatarsingh Shamrao Mali and anr. .Vs. Dhodiram Dagdu Hake

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

Court's or Judge's orders

Dr. Mrs. R. S. Sirpurkar, Advocate for petitioners.

CORAM : ANIL L. PANSARE, J.
DATE : FEBRUARY 12, 2025

Heard.

2. The challenge is to order dated 17.12.2024 passed by learned Civil Judge Junior Division in Regular Civil Suit No. 7/2019, thereby rejecting application for setting aside 'No Written Statement' order dated 18.02.2021.

3. Having heard counsel for the petitioners and having gone through the order, it transpired that in the year 2019, respondent filed a suit for possession and consequential reliefs. The petitioners - original defendant Nos. 3 and 4, appeared on 10.04.2019, but failed to file the written statement. Accordingly on 13.08.2019, 'No Written Statement' order was passed. On 01.10.2019, the petitioners filed application to set aside the order. The application was allowed on the same day. Despite allowing the application, the petitioners failed to file written statement and, therefore, vide order dated 18.02.2021 yet another order to proceed without written statement came to be passed. The petitioners after about 3 ½ years again, moved an application to set aside the order. The petitioners took a plea of Covid-19 pandemic and also change of counsel.

4. The Trial Court noted that initial order of no cross was set aside on 01.10.2019 and lockdown commenced in March – 2020 and

the petitioners have assigned no reason why written statement was not filed in the intervening period. On change of counsel, the Trial Court noted that the petitioners are appearing frequently in the proceeding since 16.08.2023 but have not explained as to why was application not filed till October, 24. Accordingly and taking aid of Order VII Rule 1 of the Civil Procedure Code, 1908, the Trial Court rejected the application.

4. Learned counsel for the petitioners made an attempt to justify the delay by contending that the counsel then appearing for the petitioners failed to file written statement and once the application to set aside no written statement order was allowed, the petitioners have engaged another counsel who suffered from Covid-19 disease and succumbed on 16.04.2021. Thus, according to him, there were reasons for not filing written statement in time.

5. I do not find any substance in the arguments for the reason below.

6. Admittedly, the order of 'no written statement' passed earlier was set aside on 01.10.2019. Usually when an application is filed to set aside the no written statement order, the defendants would annex with the application copy of written statement, which is not done here. According to the petitioners, they changed their counsel after the order of no written statement was set aside. The petitioners have, however, not disclosed the date when they changed the counsel. Further, there is absolutely no justification why was written statement not filed between the period from 01.10.2019 to 20.03.2020, the date when Covid-19 pandemic was reported. The petitioners are further silent as to when did their counsel suffer from Covid-19 virus. The second order of no written statement was passed on 18.02.2021 and the counsel expired in April 2021. There is nothing on record to show as to why was written statement not filed

prior to 18.02.2021. That apart and most importantly, the petitioners were frequently appearing in the Court since 16.08.2023, but failed to file application to set aside second order of no written statement until October, 24. Thus, there is consistent negligence on the part of the petitioners to file written statement.

7. The Supreme Court in **R. N. Jadi & Brothers and Ors. Vs. Subhashchandra, (2007) 6 SCC 420**, on this aspect held as under.

“14. 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 knockouts. 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 v. Nanhku which held that the provision was directory and not mandatory. But there could be 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 contest that in Kailash v. Nanhku 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 statement, after the expiry of the period permitted by law, in a routine manner.

15. A dispensation that makes Order 8 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 emphasise 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 8 Rule 1 must be adhered to and that only in rare and exceptional case, will 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 v. Sir Alfred McAlpine & Sons that law's delay 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?"

8. As could be seen, the Supreme Court has held that grant of extension of time beyond 30 days is not automatic and it should be exercised in a case, for adequate reasons and further the extension of time beyond 90 days of service of summons should be granted based on a clear satisfaction and justification for granting such extension. The Court further held that only in rare and exceptional cases, the breach of not filing the written statement in time should be condoned.

9. In the present case and as noted above, the petitioners failed to tender any cause muchless sufficient cause to not file written statement despite affording ample opportunity. There is thus no merit in the petition. The writ petition is dismissed in limine. No order as to costs.

10. Copy of order be served on the Trial Court.

(Anil L. Pansare, J.)