



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

WRIT PETITION NO.2091 OF 2024

(The Municipal Council Khamgaon, thr. the Chief Officer Vs. Manoj Shobhrajmal
Budhwani)

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

Court's or Judge's orders.

Mr. M. S. Sharma, Advocate for Petitioner.
Mr. M. N. Ali, Advocate for Respondent.

CORAM: R. M. JOSHI, J.

DATE: 2nd JULY, 2025.

1. By consent of both the sides, petition is heard finally at the stage of admission.
2. This petition takes exception to the order passed below Exh.19 seeking adjournment to file written statement and order dated 31.01.2024 passed below Exh.20 whereby the leave sought for filing written statement came to be rejected.
3. There is no dispute about the fact that the proceeding pending before the learned trial Court is a commercial suit. The petitioner – defendant was served with the summons on 08.08.2023. Undeniably the written statement ought to have been filed before 06.11.2023 and in any case before 06.12.2023. Admittedly, written statement has not been filed before expiry of the outer limit of 120 days.

4. It is the case of the petitioner – defendant that the learned trial Court ought to have allowed application Exh.19 granting time to file written statement. According to the petitioner, rejection of the said application and the adjournment of the hearing of suit thereafter beyond 120 days has resulted into non filing of the written statement before the said period.

5. Learned Counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in the case of *Shaikh Salim Haji Abdul Khayumsab v. Kumar and others (2006) 1 SCC 46* to contend that on account of the mistake of the Court, the party cannot be denied opportunity for filing written statement. He further placed reliance on the judgment of Coordinate Bench of this Court in case of *R. K. Mishra Indian Bank v. Poonam Resorts Limited 2023 DGLS(Bom.) 4723* to contend that in this case the leave has been granted for filing written statement beyond period of 120 days.

6. This contention however is opposed by the learned counsel for the respondent – original plaintiff with a submission that the judgment in case of *Shaikh Salim Haji Abdul Khayumsab v. Kumar and others* has no application to the present case for the reason that last date in said case for filing of the written statement fell on a holiday. It is his submission that in the instant case it was open for the petitioner – defendant to move the proceedings before the learned trial Court in order to seek leave to file written

statement within a period of 120 days. In so far as judgment in case of *R. K. Mishra (supra)* it was pointed out that in the said case for want of reference of partition to the mandatory mediation, it was held that the said period deserves to be excluded.

7. There is no dispute about the fact that in so far as the commercial suits are concerned the outer limit for filing of the written statement is 120 days. Irrespective of any amount of explanation/justification the said period cannot be extended further.

8. Herein this case the orders impugned passed by the learned trial Court were not ex-parte but in the presence of the defendant. When the defendant was aware that his application for adjournment was rejected and thereafter the proceeding was adjourned to a particular date i.e. beyond 120 days, it was the responsibility of the defendant either to seek any date before completion period of 120 days or even otherwise it was open for the defendant to move the proceeding before the learned trial Court seeking leave to file written statement. In case Court had refused to take the matter on board then it would have been open for the petitioner/defendant to claim that on account of fault of the Court, he cannot be denied to file written statement.

9. In the circumstances it cannot be held that any prejudice has been caused to the defendant by any act of the Court. Suffice it to say that the order passed by the learned trial Court refusing to allow the written statement filed

beyond period of 120 days of receipt of summons of the suit is in consonance with the settled position of law.

10. Hence, in view of above, no interference is called for in the order impugned. Petition stands dismissed.

(R. M. JOSHI, J.)

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