



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

WRIT PETITION NO. 2453/2024

(RAVINDRA GHEVARCHAND MUTHA **VERSUS** AJAY WASUDEV KUTAREKAR @ AJAYKUMAR
WASUDEVRAO KUTAREKAR & OTHERS)

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

Court's or Judge's order

Shri J.B. Gandhi, counsel for the petitioner.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : NOVEMBER 26, 2025

Heard the learned counsel for the petitioner. Although notice for final disposal of the petition was served on the respondents, nobody appears on their behalf.

2. The petitioner has challenged the order dated 05.01.2022 passed by the trial Court refusing to take on record the written statement and also the order dated 08.01.2024 passed by the trial Court rejecting his application to deposit amount of costs.

3. The short controversy involved in the petition is entitlement of the petitioner—original defendant no.1 in the suit to file his written statement by granting him further time to deposit the costs. The respondent had filed a suit for declaration and injunction against the petitioner and other persons. The petitioner had failed to file his written statement in the suit within stipulated time and therefore he filed an application on 30.11.2019 for grant of permission to file written statement and also sought setting aside of 'no written statement' order dated 28.01.2013. Although the

application was opposed, the trial Court passed order dated 29.07.2020 and allowed application subject to costs of Rs.10,000/- to be paid by the defendant no.1 to the plaintiff within two months from the date of the order. In view of failure of the petitioner to pay the costs in accordance with the order, the trial Court passed an order on 05.01.2022 directing that the written statement of defendant no.1 shall not be taken into consideration. In this background, the defendant no.1 filed an application at Exhibit 64 in the suit seeking permission to allow him to deposit the amount of costs in the Court. On this application, the trial Court passed an order dated 08.01.2024 and rejected the same. Feeling aggrieved by the orders dated 05.01.2022 and 08.01.2024, the instant petition is filed.

4. The controversy involved is about the right of the petitioner-defendant no.1 to file written statement in the civil suit. The respondents have filed Regular Civil Suit no.51 of 2011 seeking declaration and permanent prohibitory injunction with respect to the sale-deed dated 16.12.2010 executed in favour of the defendant no.1. The defendant no.1 desired to contest the suit on merits and therefore filed application for setting aside 'no written statement' order and permission to file written statement on record. Pertinently, alongwith the aforesaid application, the defendant no.1 also placed his written statement on record before the trial Court. Considering the submissions advanced by the defendant no.1, the

trial Court allowed the application by order dated 29.07.2020 and subject to cost of Rs.10,000/-, the written statement was allowed to be filed. As such, even though the defendant no.1 was permitted to file the written statement on record, there is failure on his part to deposit the costs of Rs.10,000/- within the time granted.

5. However, it has to be seen that filing of written statement is a valuable right of the defendant and denying him opportunity to file written statement is a drastic order. Interest of justice requires that the defendants be permitted to file on record their written statement so that the suit could be contested and decided on merits. It has to be noted that in view of delay on the part of defendant no.1, the order to pay costs was rightly passed. Pertinent to note, the defendant no.1 remained negligent in further complying with the order to pay costs and resultantly the order dated 05.01.2022 came to be passed.

6. It has to be noted that the petitioner is resident of Taluka Karad District Satara and the suit is pending at Khamgaon, District Buldana. Considering the fact that the written statement was already placed on record by the defendant no.1 alongwith the application dated 25.11.2019, an opportunity needs to be afforded to the defendant no.1 by extending time to deposit costs already awarded, however, subject to payment of further costs to balance the interest. Since the respondents have not appeared in this petition despite service of notice, the contentions canvassed by the petitioner remain uncontroverted.

7. Having regard to the above mentioned factual and legal aspects, interest of justice demands that the petitioner who is defendant no.1 in the suit be allowed to file his written statement on record so as to enable him to contest the civil suit on merits. The petition deserves to be allowed. Hence, the writ petition is allowed. The impugned orders dated 05.01.2022 and 08.01.2024 are quashed and set aside and the applications filed by the defendant no.1 for permission to deposit the costs is allowed subject to further costs of Rs.7,500/- to be paid by the defendant no.1 to the plaintiff. Needless to state, this amount is in addition to the amount of Rs.10,000/- which is directed to be paid by the defendant no.1 to the plaintiff in compliance with the order dated 29.07.2020 passed by the trial Court in the suit.

8. The writ petition is accordingly disposed of.

(PRAFULLA S. KHUBALKAR, J.)