



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

Writ Petition No.3708/2023
Rahul V Smt. Kamal and others

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

Court's or Judge's orders

Mr. Madhur Deo, Advocate for petitioner.
Ms. Aarti Swami, Advocate h/f Mr. R.M. Tahiliyani, Advocate for resp. no.1.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 20-08-2025.

Advocate Mr. Deo, learned Advocate for the petitioner submits that although Pursis dated 25-07-2025 seeking discharge of Vakalatnama is filed, however, the same is not pressed. He states that he has got instructions to conduct the petition on behalf of the petitioner.

2. Heard Mr. Deo, learned Advocate for the petitioner and Ms Aarti Swami, learned Advocate for respondent no.1. Nobody appears for other respondents though served.

3. In response to the notice for final disposal, parties are heard.

4. Petitioner has challenged order dated 20-02-2023 passed by the trial Court rejecting the application for time to file on record the written statement on behalf of defendant nos. 1 and 2 in the civil suit. Learned Counsel for petitioner submits that written statement was not filed immediately after the service of suit summons since a separate application under section 151 of Civil

Procedure Code, seeking stay to the suit on account of pendency of criminal proceedings on the same set of facts was filed. This application was rejected and hence a writ petition was filed. It is submitted that after Writ Petition No.3695/2023 challenging the order on the said application was decided, defendant nos.1 and 2 filed application for seeking time to file written statement vide Exhibit-130. This application was rejected by the impugned order thereby denying the defendants right to file written statement.

5. It is pertinent to note, the application filed by the plaintiff seeking permission to file written statement at Exhibit-130 came to be rejected by the impugned order, thereby taking away valuable right of the defendants to file written statement on record.

6. Learned Counsel for petitioner relies on an order dated 08-10-2021 passed by the Hon'ble Supreme Court in the matter of *Shoraj Singh vs Charan Singh* in Civil Appeal No.6304/2021 and judgment in the matter of *Kailash Vs Nanhku and others*, reported at *2005(4) SCC 480* and submits that the provisions of Order 8 of the CPC are held to be directory in nature. In view of this he submits that in the instant case in view of the circumstances pointed out in the applications filed before the trial Court, the defendants need to be allowed to file on record their written statement.

7. Having regard to the contentions submitted and in view of the reasons demonstrating the inability to file written statement at

the relevant time, in the interest of justice an opportunity needs to be granted to defendant nos. 1 and 2 to file written statement on record so that the suit is contested on merits.

8. Although learned Counsel for respondents opposes the petition and submits that the plaintiff was not diligent in filing written statement within the stipulated time, however, in view of the facts and circumstances of the case the valuable right of the petitioners need not be taken away and the respondents can be appropriately compensated.

9. Having regard to the facts and circumstances of the case, impugned order dated 20-02-2023 passed by the trial Court on application at Exhibit-130 is quashed and set aside. The petitioners are permitted to file on record their written statement before the trial Court in Regular Civil Suit No.33/2019 within a period of two weeks from today, subject to payment of costs of Rs 10,000/- to be paid to the plaintiff within two weeks.

10. Writ Petition is accordingly disposed of in above terms.

(Prafulla S. Khubalkar, J.)