

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

WRIT PETITION NO.6171 OF 2024

(Shanta w/o Balram Yadav and others Vs. Badnera – Aarvati Parsi Anjuman, by its Trustees Zubin Jal Dotivalla 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. Sawan Alaspurkar, Advocate for Petitioners.
Mr. J. J. Chandurkar, Advocate for Respondents.

CORAM: R. M. JOSHI, J.

DATE: 3rd JULY, 2025.

1. By consent of both the sides, petition is heard finally at the stage of admission.
2. Original defendant filed application Exh.42 for filing written statement. This application came to be rejected. Hence, this petition.
3. The facts on record indicate that the respondent filed suit for removal of encroachment and possession of the suit property against the defendant. The suit came to be filed on 13.03.2018. The defendants appeared before the learned trial Court on 16.06.2018. No written statement order came to be passed. An application was filed for seeking leave to file written statement on 04.07.2020. This application however, came to be rejected on the ground that the application has been filed belatedly and without any explanation.

4. Learned Counsel for the petitioner submits that as indicated from the title clause of the plaint that the defendant are milk vendor. Thus, his contention that there is reason to believe and accept the contention of the defendants that they are illiterate. It is further submitted that during the course of the trial the plaint has been amended twice on 28.11.2019 and 21.07.2022 and thus in any case the defendant would have right to file written statement to the amended plaint and since it relates back to the date of filing of the suit, there is no propriety in denying filing the written statement to entire plaint itself.

5. Learned Counsel for the respondent opposed the petition. It is his contention by drawing attention of the Court to the documents on record that even notice issued by the plaintiff to the defendant was duly replied by them which indicates they seeking legal advice. It is also pointed out that the defendants were represented by the Advocate of their choice before trial court and in absence of any satisfactory explanation given for not filing written statement in time, there is no reason for causing interference in the order. The attention of the Court is also drawn to the *roznama* to indicate that there was appearance of the defendant through their Counsel and still no steps were taken and which disentitles them to file written statement.

6. It is always in the interest of the party that the lis between them is decided on merit rather than disposal on

technicalities. The suit is for removal of encroachment and possession of the immovable property. As indicated from the cause title of the plaint itself the defendants are milk vendor. Even if it is seen from the record that through their Advocate, the respondent to the notice issued by the plaintiff and also engaged lawyers, there is reason to believe that on account of illiteracy on their own they could not have taken any steps in the matter. This coupled with the facts that there is amendment to the plaint on 28.01.2019 and 21.07.2023 which has related back to the date of filing of the suit. Undoubtedly, this entitles the defendant to file written statement to amended plaint. There cannot be any dispute about the fact that the amendment to the written statement of 21.07.2023 is right to the defendant to file written statement at least to that extent. Since the amendment relates back to the date of filing of the suit, there is no propriety in saying that the written statement would be allowed only to the extent of the amended plaint and not to the entire plaint.

7. In the peculiar facts of the case, it would be in the interest of the parties that the suit is contested on merit. For the reasons that there is apparent delay on the part of the defendant in filing of the written statement, the application Exh.42 deserves to be allowed subject to costs of Rs.3000/-. Payable by each defendant to the plaintiff.

8. Since the defendants are permitted to file written statement, order passed by trial court proceeding without

the cross-examination of the witness of the plaintiff deserves to be and accordingly set aside.

9. Learned Counsel for the defendant makes statement on instructions that the defendant would co-operate in expedite the disposal of the suit. It would be open for the learned trial Court to pass appropriate order against the defendant if it is found that there is any deliberate attempt on their part to delay the hearing of the suit. The suit stands expedited. The payment of costs of Rs.3000/- by each defendant would be precondition for pertaining Will to be taken on record.

10. Petition stands allowed in above terms.

(R. M. JOSHI, J.)