



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

WRIT PETITION NO. 1096/2025

(SHANTA PRABHAKAR KHADSE & ORS **VERSUS** VENUBAI SHAMRAOJI KHODE & ORS)

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

Court's or Judge's order

Shri Nitin R. Bhishikar with Shri Rohan Bhishikar, counsel for the petitioners.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : OCTOBER 16, 2025

Heard Shri Nitin R. Bhishikar, learned counsel for the petitioners. None appears for the respondents, though served.

2. Impugned in this writ petition is the order dated 28.03.2022 passed by the trial Court below Exhibit 32 in Regular Civil Suit No.80 of 2015 by which the application submitted by the petitioners-original defendant nos.12 to 16 to set aside the *ex-parte* order and permit them to file written statement came to be rejected.

3. The petitioners are the original defendant nos.12 to 16 in the suit filed by the respondents herein for declaration, partition, separate possession and perpetual injunction. After the notice was served upon the defendants, they had put in their appearance, however, before they could file their written statement, the order dated 08.01.2016 came to be passed to proceed *ex-parte* against the defendant nos.5, 12 and 13. In order to assert their valuable right to file written statement and contest the suit on merits, the defendant nos.12 to 16 filed an application (Exhibit 32) for setting aside the *ex-parte* order and

permission to file written statement. This application came to be rejected by order dated 28.03.2022, which is challenged in the instant writ petition.

4. Shri Nitin Bhishikar, learned counsel for the petitioners submits that on 08.01.2016, the order to proceed ex-parte against the petitioners was passed and immediately on the next date of hearing i.e. 15.02.2016, they filed application at Exhibit 32, however, the trial Court has wrongly mentioned that the *ex-parte* order was passed on 05.12.2013 and rejected the application thereby depriving the petitioners of their valuable right to contest the suit. The learned counsel for the petitioners fairly submits that alongwith the application for setting aside the *ex-parte* order, the petitioners failed to file written statement and nobody appeared before the trial Court on the date of hearing of the said application and in this background, the application came to be rejected.

5. As regards, delay in approaching the Court, it is submitted that subsequent to passing of the impugned order, the petitioner's counsel filed yet another application to set aside the ex-parte order and with the said application, the written statement was filed. Thereafter he came to know that similar such application was filed but it was rejected by the Court and, therefore, the counsel thought it fit to withdraw the application.

6. In the instant writ petition, the respondents are served, but nobody appears on their behalf. After the respondents were served,

the matter was listed before this Court on 10.10.2025 and considering their absence, this Court adjourned the matter by categorically observing that the respondents be granted one opportunity to contest the writ petition.

7. It is seen that the petitioners are the defendant nos.12 to 16 in the suit in which their valuable rights are involved. There appears some laches on the part of the petitioners in remaining diligent and file the written statement within stipulated time. However, the question is about the valuable right of the defendant nos.12 to 16 to contest the suit on merits. In view of the impugned order, the defendants would be deprived from filing the written statement and consequently they would be rendered defenceless.

8. The position of law with regard to Order VIII Rule 1 of the Code of Civil Procedure, 1908 is fairly settled in the judgment of the Hon'ble Supreme Court in ***Kailash Versus Nanhku & Others*** [(2005) 4 SCC 480] wherein it is that the provisions of Order VIII Rule 1 are directory in nature and not mandatory. As such, it is the consistent view of the Hon'ble Supreme Court that filing of the written statement is a valuable right of the defendant which need not be taken away by adopting a pedantic approach. The delay on the part of the petitioners in filing written statement would cause some hardship to the plaintiffs but, it can be compensated by awarding appropriate costs.

9. In the instant case, while issuing notice by order dated 27.02.2025, this Court has directed the petitioners to deposit an amount of Rupees Ten Thousand before this Court which seems to have been complied with and the said amount can be considered to be the amount of appropriate costs.

10. In view of the factual and legal aspects mentioned above, I find this to be a fit case in which the valuable right of the defendants to file written statement need to be protected. By allowing the defendants to file written statement, they will get an opportunity to contest the suit on merits, particularly considering the nature of the suit to be a suit for declaration, partition and separate possession. This will also avoid the multiplicity of proceedings and therefore, in the interest of justice, the writ petition needs to be allowed. Hence, the following order is passed:-

- I. The writ petition is allowed.
- II. The order dated 28.03.2022 passed by the trial Court on the application at Exhibit 32 in Regular Civil Suit No.80 of 2015 is quashed and set aside.
- III. The application filed by the petitioners-defendant nos.12 to 16 at Exhibit 32 in Regular Civil Suit No.80 of 2015 is allowed subject to costs of Rupees Ten Thousand to be paid by the petitioners.
- IV. The amount of Rupees Ten Thousand deposited by the petitioners in this Court be transferred to the Court of Civil Judge (Junior Division), Hingna and the plaintiffs would be

entitled to withdraw the same by submitting appropriate application before the trial Court.

11. The writ petition is accordingly allowed and disposed of.

(PRAFULLA S. KHUBALKAR, J.)

APTE