



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

WRIT PETITION NO. 6874 OF 2024

Sau. Prabha W/o. Govind Sontakke,
Age : 50 Years, Occu. : Private [Tailor],
R/o. Plot No.36, Ankita Housing Society,
Ghogli, Village Besa Road,
Nagpur.

.... Petitioner

VERSUS

Smt. Vimal Vinayak Kalambe,
Age : 75 Years, Occu. : Retired,
R/o. Gandhi Nagar, Corporation Colony,
Behind Indira Gandhi Hospital,
Nagpur.

.... Respondent

....
Advocate for Petitioner : Mrs. Swati K. Paunikar
Advocate for Respondent : Mr. P.U. Nandanwar

....

CORAM : PRAFULLA S. KHUBALKAR, J.

Dated : 24th SEPTEMBER 2025

JUDGMENT :

1. Heard.

2. **Rule.** Rule is made returnable forthwith and by consent of learned Advocates appearing for the parties, the petition is taken up for final disposal.

3. The petitioner's challenge is to the order dated 23.01.2019, passed by learned Judge, Small Causes Court, Nagpur, at Exhibit 24, in Regular Civil Suit No.40 of 2015, thereby rejecting the petitioner's application for setting aside 'no written statement' order and permission to file written statement.

4. The petitioner is original defendant in the civil suit bearing R.C.S. No.40 of 2015, filed by the respondent/plaintiff, seeking recovery of arrears of rent. It is the plaintiff's case that the defendant is occupying a shop block, admeasuring 10 X 10 i.e. 100 Sq. Ft., belonging to the respondent, and the defendant who is the tenant was in arrears of rent to the extent of Rs.75,000/-, on the date of filing of suit. The defendant was served in the civil suit, however, within the stipulated time, the written statement was not filed and resultantly, an order to proceed without written statement came to be passed on 06.06.2016. After the suit was proceeded, the defendant filed an application dated 08.01.2019, for setting aside 'no written statement' order and sought permission to file written statement. The said application was opposed by the plaintiff and the trial court passed the impugned order, thereby rejecting the application.

5. Learned Advocate for the petitioner/defendant submits that the petitioner is occupying the shop block, admeasuring 10 X 10 i.e. 100 Sq. Ft., where she is running a tailoring shop and her entire family is dependent upon the income from the said business. Learned Advocate for the petitioner submits that the petitioner is suffering from severe medical ailments and even her husband is also suffering from slip discs and lumbar spondylitis and he is unable to move from bed. It is submitted that, on account of the medical ailments suffered by the petitioner, she was not able to contest the suit by filing written statement at the relevant time. It is submitted that the petitioner's valuable right to file the written statement is taken away and the impugned order needs to be quashed.

6. By strongly opposing the petition, learned Advocate for the respondent/plaintiff submits that the petitioner, who is the tenant, is contesting other proceedings filed by the respondent seeking ejectment and possession and the petitioner has filed written statement in that case. It is, therefore, submitted that the petitioner has been negligent in filing the written statement in the suit for recovery of arrears and even the instant petition is filed after inordinate delay.

7. It has to be seen that the respondent has filed the suit in question for recovery of arrears of rent of Rs.75,000/-. No written statement order came to be passed on 06.06.2016. Thereafter, the petitioner filed an application dated 08.01.2019, for setting aside 'no written statement' order and seeking permission to file written statement. Perusal of the said application shows that the petitioner has stated elaborate reasons about her medical ailments. It has also to be seen that the suit has proceeded without written statement of the petitioner/defendant and resultantly, even though the petitioner is entitled to conduct cross-examination of the plaintiff's witness, however, in absence of any written statement on record, she would be deprived from setting up her defense.

8. Since the pleadings of the petitioner/defendant by way of written statement had not come on record, the petitioner has been deprived of the valuable right to contest the suit effectively. The position of law is settled in view of the judgment of the Hon'ble Supreme Court in the case of *Kailash Vs. Nankhu and Others*, [2005 (4) SCC 480] that the provisions of Order VIII Rule 1 of Code of Civil Procedure are directory and considering the facts and circumstances of a case, the defendant may be allowed to file written statement. In

the peculiar facts of this case, I am of the opinion that a pragmatic view needs to be taken since the decision of the suit on merits is desirable. At the same time, it has also to be seen that the petitioner has not been diligent in filing the written statement and so also, in filing the instant petition. The impugned order is challenged after about five years and therefore, to balance the hardship suffered by the respondent, she needs to be compensated appropriately.

9. Having regard to the legal position that the right of defendant to file the written statement is valuable and need not be taken away, thereby depriving the defendant from contesting the suit on merits and having regard to the factual and legal aspects, I am of the view that interest of justice will be subserved by allowing the petitioner/defendant to file the written statement by appropriately compensating the respondent/plaintiff with costs. Hence, following order is passed.

ORDER

- I) The Writ Petition is allowed, subject to costs of Rs.10,000/- (Rupees Ten Thousand Only), to be paid by the petitioner to the respondent, within a period three weeks from today.

- II) The order dated 23.01.2019, passed by learned Judge, Small Causes Court, Nagpur, at Exhibit 24, in Regular Civil Suit No.40 of 2015, is hereby quashed and set-aside.
- III) The application dated 08.01.2019, filed by the petitioner/defendant, at Exhibit 22 in Regular Civil Suit No.40 of 2015 is allowed and the petitioner/defendant is permitted to file written statement on record.
- IV) Rule is made absolute in aforesaid terms.

[PRAFULLA S. KHUBALKAR]
JUDGE

asd