



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

WRIT PETITION No.1044 OF 2024

(Praful Madhavrao Raut Vs. Pralhad Ramu Jadhav and another)

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

Court's or Judge's orders.

Mr. P.A. Kadu, Advocate for petitioner.
Mr. Sawan Alaspurkar, Advocate for respondent No.2.

CORAM : R.M. JOSHI, J.
DATE : 30th JUNE, 2025.

1. This petition takes exception to order passed below Exh.-64 dated 16.12.2023 in question Civil Suit No. 821/2022 whereby the application for setting aside No WS order filed by the defendant came to be allowed.

2. The petitioner is plaintiff who filed suit for seeking decree of specific performance of contract. Defendant was duly served with summons and caused appearance before the trial Court on 17.9.2022. The defendant had sought adjournments for filing written statement which were granted by the trial Court. Ultimately, on 13th November, 2022 order of proceeding without written statement of defendant came to be passed. It is thereafter plaintiff adduced his evidence, his evidence was closed on 13th September, 2023 and on 13th October, 2023 defendant's evidence was closed. Thereafter, arguments of plaintiff were over on 13th November, 2023. Hearing was postponed to 21st November, 2023. On that day trial Court passed order proceeding without arguments of the defendant.

At this stage, application came to be filed on 2nd December, 2023 for setting aside order of No WS. This application came to be allowed. Hence, this petition.

3. Learned counsel for the petitioner submits that once the arguments were over and the suit was closed for judgment, it was not open for the trial Court to pass any order including the order of setting aside No WS. To support this submission, he placed reliance on the judgment of the Supreme Court in the case of **Arjun Singh Vs. Mohindra Kumar and others**, reported in **1963 SCC OnLine SC 43**. Apart from this, it is his submission that the trial Court has made specific observations with regard to the misrepresentation on the part of the defendants and, therefore, in any case the order impugned cannot be sustained.

4. Learned counsel for the respondent/original defendants drew attention of the Court to the application Exh.-64 which according to him indicates that on account of inability of the defendant who is lady, instructions could not be given to the Advocate, which has resulted in passing of the order proceeding without written statement. He makes a statement that defendants would co-operate in the expeditious disposal of the suit.

5. The copy of roznama dated 21.11.2023 indicates that on 2nd December, 2023 the stage of the proceeding was for arguments and not for judgment. In respectful view of this Court the judgment in case of *Arjun Singh* (supra) has no application to the present case.

6. Though it is observed by the trial Court that the reasons mentioned in the application is false and misleading, this Court is of the view that from the application it cannot be said so. However, it is a matter of fact that in spite of causing of appearance on 17th September, 2022 defendant has permitted to be proceeded in her absence and the suit was ultimately fixed for final argument. In such circumstances, though the order impugned is justified, having regard to inconvenience caused to the plaintiff, defendant No.2 is directed to pay total amount of costs of Rs.10,000/- to the plaintiff.

7. The trial Court to ensure that the cost is paid before allowing the defendant No.2 to file written statement on record.

8. Since the suit is of the year 2022, the trial Court is expected to decide the suit expeditiously as possible.

(R.M. JOSHI, J.)