



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

WRIT PETITION NO. 5107 OF 2024

Chitra Anil Mahalle, Aged-60 years, Occ: Housewife,
R/o Plot No.256, Bajaj Nagar, Nagpur.

PETITIONER

VERSUS

Jayashri Ravindra Dhade, Age: 60 years, Occ: Housewife,
R/o Walki, Tq. Ner, Dist-Yavatmal. Presently at – Besides
Gadge Nagar, Radha Nagar, Near Pundlik Maharaj Mandir,
Taluka and District – Amravati.

RESPONDENT

Shri K.S. Narwade, counsel for the petitioner.
Shri J.B. Kasat, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : NOVEMBER 10, 2025

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the counsel for the parties.

2. The petitioner has challenged the order dated 12.04.2024 passed by the trial Court rejecting the petitioner's application for setting aside the *ex-parte* order and permission to file written statement.

3. The petitioner is the defendant no.2 in the suit filed by the respondent for partition and separate possession. The petitioner and respondent are real sisters and the controversy is with respect to partition of the properties belonging to their father. After the suit summons was served on the petitioner on 05.03.2018, although she engaged a lawyer, she had relied upon the assurance given by her other sister Sandhya Satish Raut about settlement of the controversy between the real brothers and sisters.

4. It is the petitioner's contention that in view of the possibility of compromise between the parties, the petitioner had not filed any written

statement at the relevant time. However after the death of Sandhya, the petitioner who was arrayed as defendant no.2 in the suit became aware that she was required to file her independent written statement. It is submitted that the *ex-parte* order was passed against the petitioner on 12.06.2018 and since the petitioner desired to contest the suit on merits, she filed an application to set aside the *ex-parte* order and sought permission to file written statement on record. The application filed by the petitioner came to be rejected by the trial Court by categorically observing that the reasons mentioned by the petitioner about possibility of compromise and her reliance on the assurance given by her sister Sandhya are not cogent and convincing. The counsel for the petitioner has relied upon the judgment of the Hon'ble supreme Court in ***Desh Raj Versus Balkishan (Dead) Through proposed legal representative Ms Rohini*** [(2020) 2 SCC 708] and submitted that the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 are directory in nature and right to file the written statement needs to be protected as it is a valuable right.

5. In response to the notice issued by this Court, Shri J.B. Kasat appeared for the respondent. He vehemently opposed the petition and submitted that the petitioner was served with the suit summons long back and she had not been diligent in contesting the proceedings. He submitted that the petitioner has failed to demonstrate any sufficient cause and any other convincing reason for getting the *ex-parte* order set aside.

6. It has to be noted that the controversy involved in the suit is between real brother and sisters with regard to partition and separate possession of the properties of their father. The petitioner has got a right to participate in the proceedings by filing her written statement. The

position of law in this regard is settled by the judgment of the Hon'ble Supreme Court in *Kailash Versus Nanhku & Others* [(2005) 4 SCC 480] that the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 are directory in nature. It has to be noted that the right to file written statement is a valuable right of the defendants since it enables them to contest the suit on merits. Considering the peculiar nature of the controversy involved in the suit, a pragmatic approach needs to be adopted by granting an opportunity to the defendant no.2 to file written statement although there is substantial delay on the part of the petitioner in filing the application for setting the side the *ex-parte* order and permission to file written statement. The same can be compensated by awarding appropriate costs to the respondent-plaintiff. A perusal of the impugned order shows that the trial Court has adopted a pedantic approach. In the interest of justice, application submitted by the petitioner-defendant no.2 needs to be allowed to file the written statement to enable her to contest the suit on merits. Hence, the following order is passed:-

- I. The writ petition is allowed.
- II. The order dated 12.04.2024 passed by the trial Court on Exhibit 91 in Regular Civil Suit No.3 of 2018 is quashed and set aside. The application at Exhibit 91 is allowed.
- III. The petitioner is permitted to file her written statement within four weeks from the date of uploading of this order subject to payment of costs of Rupees Twenty Five Thousand to be paid by the petitioner to the respondent within a period of four weeks from today.

7. Rule is made absolute in aforesaid terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE