IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8358 OF 2018

KALAVATI KANAIYALAL RUNWAL
VERSUS
M/S ASHWINI TRADING COMPANY THROUGH PROPRIETOR
SUSHILADEVI RAMESHKUMAR BAGARIA
...
Advocate for Petitioner : Mr. R. K. Jadhavar
...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 29-10-2026

PER COURT:-

1. The petitioner (original defendant No.52) assails the order dated 20.02.2018 rendered by 2nd Joint Civil Judge, Senior Division, Aurangabad, in Special Civil Suit No.155 of 2016, rejecting application (Exhibit-99) seeking permission to present written statement by condoning the delay of 275 days.

2. The respondent (original plaintiff) has instituted suit seeking declaration and injunction in relation to suit property. The dispute arises out of transaction between the petitioner and the developer/builder of respondent. The respondent has challenged the agreement, the rectification deed and the General Power of Attorney, dated 31.03.2001, also seeking consequential reliefs.

3. The petitioner claims to have purchased the suit property through a registered transaction executed for consideration and claims to be in possession thereof. The petition refers to the agreement dated 09.03.2005 for consideration of Rs.7,96,500/-.

4. Upon service of summons, the petitioner appeared before the Trial Court. However, could not present written statement within the prescribed period of limitation. Initially, sought extension of time by submitting an application (Exhibit-77), which came to be rejected on 21.01.2017.

5. Subsequently, on 24.11.2017, the petitioner tendered written statement along with an application seeking permission to take the same on record while condoning the delay. The said application was opposed by the plaintiff. However, the Trial Court rejected the application by the order under challenge. Against the same, the petitioner is before this Court.

6. Learned counsel for the petitioner submits that the petitioner is an age old lady and, for want of necessary information and relevant documents, could not present the written statement. It is submitted that the delay was neither intentional nor deliberate, and the petitioner had no intention to protract the proceedings.

7. Learned counsel further submits that the suit involves several defendants and raises issues concerning the transactions executed in relation to the suit property. Depriving the petitioner of an opportunity to present written statement on record would prejudice interests. Hence, prayed to allow the petition.

8. Apart from the court notice, although the service affidavit

placed on record by the learned counsel for the petitioner demonstrates service of notice upon the respondent, none appeared.

9. Upon hearing the submissions of the learned counsel for the petitioner and perusing of the material placed on record, including the application (Exhibit-99) and the order under challenge, indicates that the petitioner has assigned sufficient reasons in support of the delay, substantiated by the material placed on record. The petitioner's written statement is necessary for proper adjudication of the dispute.

10. Admittedly, the petitioner has claimed the right in the suit property as a purchaser through a registered transaction and is in possession thereof. Since the suit involves property rights. Refusing to accept written statement would defeat an opportunity to defend the title, resulting in prejudice. At this stage, the sustainability of claim as a *bona fide* purchaser cannot be examined on merits, and taking away defence would defeat substantive rights.

11. Learned counsel for the petitioner is justified in submitting the provisions under Order VIII Rule 1 are directory in nature and not mandatory. The Trial Court has not considered liberal approach while ignoring the nature of the suit and the petitioner’s status as a purchaser.

12. In that view of the matter, the order under challenge cannot be sustained and the same deserves to be set aside.

13. It is clarified that this Court has not expressed any opinion on the merits of the case. The Trial Court shall decide the suit independently on the basis of pleadings and evidence, uninfluenced by any observations made herein.

14. In view of the above, following order is passed;

ORDER

(i) The writ petition is allowed.

(ii) The order rendered by the learned 2nd Joint Civil Judge, Senior Division, Aurangabad, below application Exhibit-99 in Special Civil Suit No.155 of 2016, dated 20.02.2018, is quashed and set aside.

(iii) The application (Exhibit-99) stands allowed.

(iv) The written statement tendered by the petitioner on 24.11.2017 shall be taken on record.

(v) The Trial Court shall proceed with the suit expeditiously, on its own merits and in accordance with the law.

(vi) There shall be no order as to costs.

[SACHIN S. DESHMUKH]
JUDGE

rrd