



IN THE HIGH COURT OF JUDICATURE BOMBAY  
AT AURANGABAD

WRIT PETITION NO.12117 OF 2024

Narayan Dattarao Sontakke,  
Age: 73 years, Occupation: Agri.  
R/o Akoli, Tq. Gangakhed,  
District Parbhani.

.....*PETITIONER*  
(Original defendant)

*VERSUS*

Nagnath Dattarao Sontakke,  
Age: 77 years, Occupation: Agri.  
R/o. Akoli, Tq. Gangakhed,  
A/p. Resinding at Tadkalas, Tq. Purna,  
District: Parbhani

.....*RESPONDENT*  
(Original plaintiff)

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Mr. J. M. Murkute, Advocate for the petitioner  
Mr. S. N. Lavekar, Advocate for respondent-sole

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CORAM     AJIT B. KADETHANKAR, J.  
DATED     07<sup>TH</sup> MARCH, 2026

**JUDGMENT :- (Per Court)**

1. Rule. Rule made returnable forthwith.
2. Heard finally with consent of Mr. J. M. Murkute, learned Counsel for the petitioner and Mr. S. N. Lavekar, learned Advocate for respondent-sole.

3. Regular Civil Suit No.14 of 2016 came to be filed by the present respondent against the petitioner in the Court of learned Civil Judge, Senior Division, Gangakhed seeking partition and separate possession in respect of the suit property.

4. When the suit was filed, the plaintiff/respondent was aged about 70 years old, while the petitioner/defendant was about 65 years old. Suit summons were served on the defendant/petitioner and the petitioner caused his appearance on 06.03.2016. The petitioner sought to file his written statement together with an application to condone the delay of 58 days caused in filing the written statement. The respondent/plaintiff opposed the application for condonation of delay. Learned Civil Judge, Senior Division, Gangakhed heard the parties and vide impugned order dated 15.11.2016 opined that the defendant could not establish sufficient cause to condone the delay, and therefore declined to exercise discretion to accept the written statement on record.

5. This has given cause to the defendant to file the present Writ Petition.

6. Mr. J. M. Murkute, learned Counsel for the petitioner would submit that the suit is for partition between two step brothers. He would further submit that the delay of 58 days caused in filing the

written statement is not an inordinate delay so as to deprive the petitioner from his legitimate right to put on record the true facts from his side.

7. He would submit that the petitioner is ready to compensate the plaintiff/respondent if his written statement is allowed to be taken on record. Mr. Murkute, learned Counsel would further submit that the petitioner gives assurance before this Court that he shall not seek a single adjournment in the suit and shall not protract the trial proceedings. He also undertakes to abide by the Written statement sought to be placed in the Trial, to adhere to the Examination is Chief sought to be placed in consequence, and to defend the suit in the light of the issues casted already.

8. He also submits that even the petitioner has tendered his examination-in-chief before the learned Trial Court, however, since the written statement itself is not on record, the learned Trial Court declined to accept the said examination-in-chief. To conclude, Mr. Murkute, learned Counsel for the petitioner submits that the Writ Petition be allowed. The application filed by the petitioner below Exhibit-12 in the Trial Court be allowed, and petitioner's written statement be directed to be taken on record.

9. Per Contra, Mr. S. N. Lavekar, learned Counsel for the plaintiff/respondent would strongly object the petition. He would submit that the application filed by the petitioner lacks demonstration of good and sufficient reason to condone the delay. He would further submit that the petitioner was not diligent in prosecuting his rights in a timely manner. Another submission is advanced by Mr. Lavekar, Ld. Counsel for the plaintiff/respondent that the evidence in the suit is part heard, and the defendant has even cross-examined the plaintiff.

10. To conclude, Mr. Lavekar would rely upon the judgment rendered by this Court in the case of ***Sudhirkumar Krishnalal Sahani Vs. Nagar Parishad/Nagar Palika/Municipal Council Hinganghat & Anr***, reported in ***2009(5) ALL MR 132***. Mr. Lavekar, learned Counsel for the respondent would rely on the paragraph no.14 and 15 of the discussion in the judgment, which is reproduced as under:

*“14. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knockouts. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in Kailash Vs. Nanhku which held that the provision was directory and not mandatory. But there could be situations where even a procedural provisional could be construed as mandatory, no doubt retaining a power in the Court, in*

*an appropriate case, to exercise a jurisdiction to take out the rigour of that provision or to mitigate genuine hardship. It was in that contest that in Kailash Vs. Nanhku it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. Kailash is no authority for receiving written statement, after the expiry of the period permitted by law, in a routine manner.*

*15. A dispensation that makes Order 8, Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8, Rule 1 must be adhered to and that only in a rare and exceptional case, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailling the delays in the disposal of suits filed in courts. The lament of Lord Denning in Allen Vs. Sir Alfred Mc Alpine & Sons that law's delay have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times ?”*

11. As per the arguments advanced by Mr. Lavekar, the learned Trial Court rightly refused to exercise the discretion to condone the delay and no written statement order stands well justified. Reluctantly, Mr. Lavekar, advanced an alternate argument that, in the event if this Court agrees with the petition, heavy costs may be imposed on the petitioner and directions be issued to the learned Trial Court to conduct a time-bound trial.

12. With the able assistance of the learned Counsels for the respective parties, I have gone through the papers attached to the Writ Petition compilation.

13. At the outset, I note that it is not only a case of delay of 58 days caused in filing the written statement, but Writ Petition itself has filed 08 years after the impugned order was passed. Now, I deal with the subject matter issue in the Writ Petition.

14. The suit is between two step-brothers. Both the parties are nearing their 80's. It is well settled that in a suit for partition, every party is in the position of a plaintiff. It is a right of the defendant to demonstrate that the subject matter-property is not joint family property/ancestral property, or partition has already been taken place between the parties, or the subject matter-property is defendant's self-acquired property, etc. The defendant is also entitled

to challenge locus of the plaintiff. Usually, suits for partition are contested by the parties predominantly on these controversies.

**15.** In the case in hand, there are only two parties to the suit. The defendant/petitioner does not dispute his relationship with the plaintiff/respondent. The nature of the litigation is as such that the stake of defendant shall not be decided by the learned Trial Court merely on the basis of the pleadings of the plaintiff. The nature of decree sought in the suit is such that during the execution of the decree again the right of defendant will be needed to be answered. In the execution of the decrees in partition suites unless the rights of the parties are crystallized on the basis of their pleadings in the trial, in my view the execution of decree and the object of the suit may not reach to its logical end.

**16.** Hence, I am of the opinion that the petitioner/defendant be given an opportunity to place on record his pleadings. This is also so because conclusion of the present Partition Trial in the absence of pleadings by defendant would merely keep the parties engaged in prolonged litigation on the ground that the defendant was denied an opportunity of being heard. Its a posteriori that challenges to such decree and also the execution proceedings revolve only around the technicality and often result into relegation of the matter back to the Trial.

17. I have respectfully gone through the findings recorded by the Co-ordinate Bench of this Court in the case of ***Sudhirkumar*** (supra). True that condonation of delay in accepting the written statement is purely a discretion of the concerned Court. There is no reason to dispute this legal position. This Court has rightly observed that the discretion must be used cautiously. This Court has held that in exceptional circumstances, the delay in filing the written statement can be condoned on clear satisfaction that sufficient justification exists for extending the time. I agree with the view expressed by this Court in the case of ***Sudhirkumar*** (supra). In my considered opinion, the case in hand is fit for exercising the discretion to condone the delay caused in filing the written statement in the light of the peculiar facts.

18. Reliance is placed by the learned Counsel for the Petitioner on the case of ***Desh Raj Vs. Balkishan (d) through Proposed L.R.***, reported in ***MANU/SC/0055/2020***. Their Lordships allowed to condone the delay caused in lodging the written statement in the light of unique circumstances of the case by taking lenient view.

19. I am of the considered and pragmatic view that in the light of the facts of the case as observed above i.e. i) nature of litigation, ii) the status and ages of the parties, iii) the practical difficulty in executing decree in such a suit, and to take the controversy to its

logical end, the defendant needs to be given an opportunity to place his written statement on record.

**20.** Learned Counsel for the petitioner has already made a statement that petitioner's examination-in-chief was also sought to be filed and that the petitioner shall not go beyond the said statements in the examination-in-chief, if the written statement is taken on record. As such, the Petitioner/ defendant has even undertaken to defend the suit only in the light of the issues framed by the Ld. Trial Court. Petitioner to strictly adhere to the undertakings.

**21.** One more reason to use the discretion is that, the suit is of 2016. The evidence is part heard since 2016. For 10 years, the suit merely remained pending. Under such circumstances, ends of justice could be achieved if the defendant is permitted to place on record his written statement, and the trial is directed to be concluded in time bound manner.

**22.** This Court is aware that the impugned order came to be passed in 2016 and the petitioner has approached this Court in 2024. Vide order dated 12.11.2024, this Court has stayed the suit proceedings. Mr. Murkute, learned Counsel for the petitioner would sincerely submit that considering the age of the petitioner and his background that the petitioner is a poor agriculturist, residing in a

very remote place of Gangakhed Taluka, the delay caused in filing the Written Statement may be considered in view of his real grievance stated in the application at Exhibit-12. Since, this Court has arrived at conclusion that the application at Exhibit-12 filed by the petitioner deserves to be allowed, in my opinion the writ petition needs to be entertained for the reasons recorded above, particularly in the light of the fact that the suit is pending as it is till this date.

**23.** For the reasons recorded above, I deem it appropriate to allow the Writ Petition, however by imposing certain costs on the petitioner for the delay and latches. Hence, I pass following order:

**ORDER**

- i. Writ Petition is allowed.
- ii. Impugned order dated 15.11.2016 passed below Exhibit-12 in Regular Civil Suit No.14 of 2016 by the Ld. Civil Judge Senior Division, Gangakhed is quashed and set aside.
- iii. The application at Exhibit-12 filed by the defendant/petitioner stands allowed. Parties to immediately appear before the Ld. Trial Court for resumption of the Trial proceedings.
- iv. The Trial be concluded within a period of 10 months from today.

- v. In the circumstances the petitioner shall pay a costs of Rs.15,000/- to the respondent to be deposited in the learned Trial Court, Gangakhed within four weeks from today. The respondent is allowed to withdraw the same.
- vi. Rule made absolute in above terms

**(AJIT B. KADETHANKAR, J)**

*Rushikesh/2026*