



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 11 OF 2025

MOHD. NAJAN S/O MOHD AZAM
VERSUS
CHANDRAKALABAI W/O HIRA SWAMI B. CHOUDHARI

...
Advocate for Appellant : Mr. G.R. Syed
Advocate for Respondent : Mr. M.M. Parghane
...

CORAM : SHAILESH P BRAHME, J.

**RESERVED ON : 04.02.2026
PRONOUNCED ON : 12.02.2026**

PER COURT :

Heard both sides. Being aggrieved by order of remand passed in Regular Civil Appeal No. 36/2023, the appellant-original plaintiff has preferred this appeal. His Special Civil Suit No. 182/2022 for specific performance of contract was decreed by the Trial Court.

2. Both the counsels have canvassed their submissions in furtherance of substantial questions of law framed by this Court.

3. The learned counsel for appellant submits that respondent did not file written statement despite extending her opportunity. No written statement was annexed along with application (Exh. 22). She did not challenge order dated 13.01.2023 passed below Exh. 22 rejecting her application. Learned counsel has adverted my attention to Roznama to show that trial court was reasonable and fair in deciding the suit. It is submitted that the lawyer representing the respondent did not turn up in the present case but appearing in other matters.

4. Per contra, learned counsel Mr. Parghane submits that respondent was ailing and she was taking treatment. The Trial Court proceeded with undue

haste. One opportunity should be given to the respondent to contest the suit.

5. The suit for specific performance of contract was founded on agreement to sell at Exh. 25, which was further corrected on 11.10.2021 by instrument at Exh. 34. The respondent had appeared in the Trial Court through her attorney who was her son. She did not file written statement. The roznama produced on record reveals that she appeared on 14.11.2022 through lawyer advocate Mr. U.S. Misal and sought time for filing written statement. Matter was adjourned to 23.11.2022. It was further adjourned to 14.12.2022 for filing written statement. On 14.12.2022 order was passed below Exh. 1 that suit to proceed without written statement.

6. The respondent submitted application (Exh. 22) on 13.01.2023 for setting aside no written statement order. It was rejected on 13.01.2023. Pertinently, a copy of the written statement was not accompanying application Exh. 22. No endeavour has been made to challenge order passed below Exh. 22. Thereafter, matter was pending for couple of dates during which the plaintiff led his evidence. The suit was ultimately decreed on 13.04.2023.

7. It is evident that approach of the respondent is very casual. She did not participate in the proceedings. The evidence of applicant was not challenged by her or her advocate. Her advocate was attending the other matters. The extracts of Roznama showing that he was attending the Court from 01.01.2023 to 13.01.2023 cannot be doubted. This crucial aspect of the matter has not been dealt with by the lower Appellate Court.

8. The Appellate Court is swayed away by the medical papers of the respondent. She was being represented by her attorney, who was non else than her son. No reason is assigned as to what prevented the attorney to prosecute the matter diligently. Despite these facts, I am not inclined to interfere with the impugned judgment and order. The stakes are involved in

the matter. Equities can be balanced by imposing heavy costs upon the respondent. The matter was decided by the Trial Court on 13.04.2023. I find that appellate Court has adopted pragmatic approach. The substantial questions of law need to be answered against the appellant.

9. Appeal from Order is dismissed.

10. Impugned judgment and order shall stand confirmed with following modification:

(a) Respondent shall pay additional costs of Rs. 20,000/- (Rs. Twenty Thousand only) within period of three weeks from the date of appearance of parties before the Trial Court which shall be condition precedent.

(b) Both parties shall appear before the Trial Court on 20.02.2026.

(c) The respondent shall file written statement on the date of appearance. No further time shall be granted to her.

(d) If respondent fails to file written statement, the decree passed by the Trial Court shall stand confirmed, by quashing impugned order of remand.

(SHAILESH P. BRAHME, J.)

mkd/-