



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

WRIT PETITION NO.3375 OF 2026

**SHRIRANG DATTATRAY KSHIRSAGAR
VERSUS
SHANTABAI DATTATRAY KSHIRSAGAR AND OTHERS**

...
Ms. Madhaveshwari S. Mhase, Advocate for Petitioner.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 16th APRIL, 2026.**

ORDER:-

1. The present Writ Petition takes exception to order dated 08.12.2025 passed below Exhibits-122 and 124 by Civil Judge Senior Division, Nilanga in Regular Civil Suit No.405/2014, whereby Trial Court allowed applications filed by defendant nos.1 and 4 for setting aside 'No W.S' order and acceptance of written statement.

2. On 01.04.2026, when matter was heard in first session, learned Advocate appearing for petitioner had submitted that injunction order is passed in suit. The petitioner/defendant no.2 is sufferer of said order. The impugned order, permitting filing of written statement would result in delay in further proceeding of suit. On this submission, order directing issuance of notice of this Writ Petition was passed. However, in afternoon session, learned Advocate appearing for petitioner fairly submitted that no

injunction order is operating against petitioner/defendant no.2. It was further stated that earlier statement was made inadvertently and request was made to pass appropriate order.

3. The respondent no.6 has instituted Regular Civil Suit No.405/2014 seeking relief of partition, separate possession and declaration that sale deed bearing no.5315/2009 dated 07.12.2009 is not binding on rights of plaintiff. The plaintiff sought 1/6th share in suit property alongwith defendant nos.1 to 4 and 6, who are legal representatives of deceased Dattatraya Rajaram Kshirsagar. The suit summons were issued. The written statement was filed on behalf of petitioner/defendant no.2. However, defendant nos.1 and 4 failed to file written statement within time. Eventually, on 19.10.2015, 'no W.S.' order was passed against them. The defendant nos.1 and 4 filed application in year 2025 seeking permission to file written statement by setting aside 'no W.S' order. The petitioner contested said application.

4. It appears that, issues were framed in suit on 09.09.2019. The plaintiff had filed her evidence affidavit below Exhibit-86 on 05.10.2019, however, meanwhile defendant no.3 expired. The plaintiff moved application for bringing legal representatives of defendant no.3. Ultimately, on 13.11.2025, suit was fixed for recording cross-examination of plaintiff. At this stage, defendant nos.1 and 4 filed application below Exhibits-122 and 124 for setting

aside 'no W.S.' order. They contended that they are old aged persons. The suit is filed for partition and separate possession. Looking to nature of dispute and stage of suit, Trial Court allowed application and permitted filing of written statement subject to payment of cost of Rs.10,000/-.

5. Ms. Madhaveshwari Mhase, learned Advocate appearing for petitioner vehemently submits that in absence of plausible reasons explaining circumstances leading to non-filing of written statement within stipulated period, there was no ground to set aside 'no W.S.' order, particularly Trial Court could not have ignored delay of about 10 years in filing applications and could not have permitted filing of written statement, when matter was posted at the stage of evidence.

6. Although there is substance in contentions of petitioner, this Court finds that petitioner/defendant no.2 cannot be treated as aggrieved person by order permitting co-defendant to file written statement. The present Writ Petition is not filed by plaintiff. The plaintiff accepted order passed by Trial Court. The Trial Court has recorded sufficient reasons for permitting defendant nos.1 and 4 to file written statement, particularly looking to nature of suit.

7. It is trite that, in partition suit when relationship is not disputed, all parties are having status of plaintiff. In this

background, this Court finds that impugned order need not be interfered at the instance of petitioner/defendant no.2, particularly when plaintiff is not aggrieved by order.

8. In result, Writ Petition sans merit. Hence, dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2026