



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

WRIT PETITION NO. 1398 OF 2025

Naimkhan Rahimkhan, Aged 54 years, Occ: Business,
R/o Nawabpura, Akola, Taluka and District Akola.

PETITIONER

VERSUS

Sheikh Nadim Sheikh Salim, Aged 36 years, Occ:Business,
R/o Harifal Khamgaon, Tq. Khamgaon, Dist.Buldana.

RESPONDENT

Shri A.M. Tirukh, counsel for the petitioner.
Shri T.M. Zaheer, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : MARCH 25, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. The petitioner has challenged the order dated 19.09.2024 passed by the trial Court thereby allowing the application of the defendant for setting aside the 'no written statement' order.

3. The petitioner, who is the original plaintiff, has filed Regular Civil Suit no.165 of 2014 for specific performance of contract. In the suit, the defendant appeared in July-2014 but failed to file the written statement within time and the suit proceeded without written statement. The defendant's application for permission to file written statement was allowed by the trial Court on 07.08.2015 and the delay was condoned subject to costs of Rs.2,500/- which he failed to deposit and resultantly the 'no written statement' order was passed on 28.12.2015. Subsequent two applications filed by the defendant for setting aside 'no written statement' order at Exhibits 15 and 38 were also rejected however, the

application dated 05.08.2024 at Exhibit 39 came to be allowed by order dated 19.09.2024 subject to costs of Rs.1,500/-. The plaintiff has challenged this order by way of instant petition.

4. The primary contention of the counsel for the petitioner is that the original defendant had been negligent in filing the written statement in time and repeated failure to pay the costs and comply with the order also showed the callous attitude of the defendant. He submitted that the defendant had abused the process of law since despite the first order allowing the application subject to costs of Rs.2,500/-, he has not bothered to obey the order and as such he is not entitled for any discretionary relief by this Court.

5. As against this, learned counsel for the respondent submitted that original defendant is a rustic villager who is unaware about the niceties of law and about serious implications of not filing the written statement. He submitted that the defendant is a very poor person and was not in a position even to deposit the amount of Rs.2,500/- at the relevant time. However, since now the defendant desires to contest the suit on merits, his valuable right to file the written statement need to be protected.

6. While considering the rival contentions, it has to be noted that the trial Court has allowed the defendant to file written statement subject to costs of Rs.1,500/-. This order is passed by considering that the right to file the written statement is a valuable right of the defendant and despite earlier negligent conduct of the defendant, an opportunity was required to be afforded so that the suit could be contested on merits.

7. It has also to be noted that the first application of the defendant for setting aside 'no written statement' order was allowed subject to costs of Rs.2,500/- which amount was not deposited by him and even after rejection of several applications for the same purpose, the trial Court has allowed the application at Exhibit 39 by order dated 19.09.2024 by a one line order. The entire conduct on the part of the respondent/original defendant clearly shows that he was not at all diligent in prosecuting the suit. His failure to deposit the costs of Rs.2,500/- at the relevant time and his further conduct clearly shows that he was not diligent. Further, even the order passed by the trial Court does not at all mentions any reasons for allowing the application at Exhibit 39.

8. Be that as it may, the defendant's right to file the written statement is a valuable right and in the interest of justice an opportunity needs to be granted to him to file the written statement for contesting the suit on merits. Hence, although the trial Court has not recorded elaborate reasons, it has to be seen that the reason for allowing the application is mainly to afford an opportunity to the defendant to defend the suit on merits. In view of the entire conduct of the defendant, I am of the considered opinion that the defendant is entitled for grant of one more opportunity to file the written statement, however by considering the hardship suffered by the petitioner-plaintiff, he need to be appropriately compensated.

9. Therefore, the impugned order passed by the trial Court on 19.09.2024 allowing the application at Exhibit 39 is not interfered, except to the extent of costs of Rs.1,500/- and it is directed that the application filed by the defendant at Exhibit 39 is allowed subject to costs of Rs.20,000/- to be deposited by the defendant before the trial Court within four weeks. It is clarified that this amount of costs include the earlier costs of Rs.2,500/-. After the amount is deposited, the petitioner-plaintiff would be entitled to withdraw the said amount. Having regard to the nature of litigation and the conduct of the parties, the trial Court is directed to make an endeavour to decide Regular Civil Suit no.165 of 2014 within a period of one year from today.

10. The writ petition is accordingly disposed of in aforesaid terms. Rule accordingly.

(PRAFULLA S. KHUBALKAR, J.)