



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

WRIT PETITION NO. 3046 OF 2025

1. Devkabai Zinguji Tayde, Aged 76 years, Occ: Homemaker.
2. Purushottam Zinguji Tayde, Aged 50 years, Occ. Labour.

Both R/o Near Arunbaba Math, Rambagh, Ajni,
Medical Road, Nagpur, Tq. & Dist. Nagpur.

PETITIONERS

VERSUS

1. Liladhar Zinguji Tayde, Aged 54 years, Occ:Agriculturist.
2. Narendra Zinguji Tayde, Aged 56 years, Occ: Agriculturist.

Both R/o Wani (Belkheda), Tq. Chandur Bazar, Dist. Amravati. **RESPONDENTS**

Shri D.S. Khushalani, counsel for the petitioners.
Shri B.N. Jaipurkar, counsel for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : JANUARY 17, 2026

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioners have filed the instant petition challenging the orders dated 09.06.2023 below Exhibit 1 and 08.12.2023 below Exhibits 20 and 21 passed by the trial Court rejecting their applications for permission to file written statement on record by condoning the delay.

3. The petitioners are the original defendants in the suit filed by the respondents seeking declaration, permanent injunction and cancellation of the gift-deed dated 23.10.2020. The defendants were served with the suit summons, however they failed to file their written statement within the time provided by law and resultantly by order dated 09.06.2023 passed on

Exhibit 1, the suit was ordered to be proceeded without written statement. The application filed by the petitioners for condonation of 79 days delay vide Exhibit 21 in filing the written statement and permission to file the written statement, vide Exhibit 20 came to be rejected by the impugned order and hence, the petitioners have filed the instant petition.

4. It has been pointed out that the petitioner no.1/defendant no.1 in the suit is aged 76 years and is residing at Nagpur alongwith the petitioner no.2 who is her son. The suit is filed at Achalpur in Amravati district and on account of severe health issues of the defendant no.1, the defendants were not able to immediately file the written statement. After the 'no written statement' order was passed, on the same day the defendants filed applications at Exhibits 20 and 21 for condonation of delay of 79 days. These applications came to be rejected by the trial Court only for the reason that the application was not accompanied with any medical certificate showing any ailment of the defendant no.1. The learned counsel for the petitioners in this regard submitted that considering the fact that the applications at Exhibits 20 and 21 were filed on the same day on which the 'no written statement' order was passed, the trial Court ought not to have adopted a hyertechnical approach.

5. The learned counsel for the respondents submitted that the defendants were not diligent in filing the written statement within the time provided by law and the application at Exhibit 21 was also submitted casually without filing on record any medical report. He therefore justified the impugned order.

6. The short controversy involved in the petition is about entitlement of the defendant to file on record the written statement by setting aside the 'no written statement' order. It is crucial to note that the defendants had filed the applications at Exhibits 20 and 21 on 09.06.2023, i.e. on the same day on which the 'no written statement' order was passed. The defendants have also categorically mentioned in the said application that necessary documents about medical ailments of the defendant no.1 can be produced in case the Court passes any such orders. As such, even though the documents about medical treatment of the defendant no.1 were not produced on record, it has to be seen that the defendants have diligently filed the applications and have expressed readiness to file the written statement. Hence, a pragmatic approach was required to be adopted since filing of the written statement is a valuable right and the defendants cannot be deprived of their right to contest the suit on merits. The hardship likely to be caused to the plaintiffs can be compensated by awarding appropriate costs. Under these circumstances, the approach adopted by the trial Court in rejecting the application for condonation of delay and permission to file the written statement is clearly erroneous.

7. Having regard to the above mentioned factual and legal aspects, I am of the firm view that the defendants need to be granted an opportunity to file their written statement in the interest of justice. Hence, the following order is passed:-

I. The writ petition is partly allowed.

II. The order dated 08.12.2023 passed by the trial Court below Exhibits 20 and 21 and order dated 09.06.2023 passed by the trial Court on Exhibit 1 in Special Civil Suit 25 of 2022 are quashed and set aside.

III. The applications filed by the defendants at Exhibits 20 and 21 are allowed subject to costs of Rs.10,000/- to be paid by the defendants to the plaintiffs. The amount of costs already deposited by the petitioners in this Court in accordance with the order dated 24.06.2025 is permitted to be withdrawn by the respondents.

8. Rule is made absolute in aforesaid terms.

(PRAFULLA S. KHUBALKAR, J.)

APTE