



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3294 OF 2025

ALOK MADHUKAR GHATE
VERSUS
SWATI SUDHAKAR BAWANE

<i>Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders</i>	<i>Court's or Judge's orders</i>
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Mr. Alok M. Ghate, Petitioner In Person.
Advocate Mr. Yash Venkatraman, Assist to the Petitioner.
Mr. N.R. Bhishikar, Advocate for Respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATED : 20th APRIL 2026

PER COURT :-

1. Heard the petitioner in person and Mr. N.R. Bhishikar, learned Advocate for the respondent.
2. By this petition, the petitioner has challenged various orders passed by the trial court in Special Civil Suit No.30 of 2023, pending before the Court of Civil Judge Senior Division, Chandrapur.
3. The petitioner's challenge is to the order dated 27.07.2023, at Exhibit 01, passed by the trial court, by which the suit is directed to be proceeded ex-parte, order dated 12.09.2024, passed by the trial court rejecting the application at Exhibit 18 for setting aside ex-parte order dated 27.07.2023, order dated 01.01.2025, rejecting the application for permission to cross-examine the plaintiff's

witness and order dated 04.09.2025, rejecting the application for permission to adduce evidence on behalf of the petitioner.

4. The petitioner is the original defendant in the suit filed by the respondent, seeking specific performance of contract. In the said suit, the suit summons was served upon the petitioner on 18.04.2023, who failed to file written statement within stipulated period and resultantly, on 27.07.2023, the trial court passed the order to proceed the suit ex-parte. On 01.04.2024, the petitioner filed an application for setting aside ex-parte order by contending that the suit summons was not served personally upon the petitioner and the same was served upon the petitioner's father, who did not inform the petitioner about receipt of any suit summons received from the court. This application came to rejected by the trial court *vide* order dated 12.09.2024 and as a result, the petitioner was not permitted to place on record the written statement. Thereafter, the suit proceeded further and at the stage of evidence, the petitioner filed an application for permission to cross-examine the plaintiff's witness, which came to be rejected by order dated 01.01.2025. Thereafter, the further application for permission to adduce evidence filed by the petitioner also came to rejected by order dated 04.09.2025. The petitioner has challenged all these orders by way of instant petition.

5. The petitioner, who appears in person, states that he was not aware about the suit summons and his father had received some envelope, who did not inform the petitioner about the same and as a result, the written statement could not be filed within stipulated period. He submits that he is contesting the suit in person and because of denial of an opportunity to file written statement, he is deprived of contesting the suit on merits. He invites attention to the observations recorded by the trial court about his conduct in delaying the matter by filing various applications from time to time. He submits that he has not deliberately caused delay and the applications were filed according to his understanding. In view of this, he submits that the relief claimed by way of suit, being a suit for specific performance of contract about an agreement to sale of the property, needs to be defended on merits and the petitioner be, therefore, granted an opportunity to file written statement and contest the suit on merits.

6. The petition is opposed by Mr. N.R. Bhishikar, learned Advocate for the respondent. He points out inconsistency in the stands taken by the petitioner before the trial court *vide* application dated 01.04.2024 and the reasons put forth in the memorandum of petition. He submits that the petitioner is unnecessarily delaying the proceedings by filing frivolous applications and the trial court has rightly passed the order dated 27.07.2023, directing ex-parte conduct

of the proceedings. He invites attention to an affidavit filed by the petitioner's father in this petition and points out that the petitioner has taken contradictory stands with respect to his conduct of proceedings and the narration of events.

7. Be that as it may, the controversy ultimately involved is whether the petitioner be granted an opportunity to contest the suit on merits by setting aside the ex-parte order. It has to be noted that the petitioner, who has appeared in person before the trial court, was not diligent enough to file written statement within stipulated period and has not submitted cogent reasons for getting the ex-parte order set-aside. However, denying an opportunity to file written statement and to contest the suit on merits would be a pedantic approach. In view of the ex-parte order dated 27.07.2023, the suit has proceeded further and resultantly, subsequent orders referred above are passed.

8. Having regard to the nature of the suit, being a suit for specific performance of contract, only in the interest of justice and avoid multiplicity of proceedings, an opportunity needs to be granted to the petitioner to file on record the written statement, so that the suit is contested on merits. It has also to be noted that because of the petitioner's conduct being not at all diligent, the plaintiff is required to suffer and was required to contest the litigation upto this Court and

thus, the plaintiff has suffered hardship, which needs to be compensated. In fact, the situation warrants imposition of exemplary costs upon the petitioner, however, the petitioner has put forward the reasons of his inability to pay any cost at this time by stating that he is a student and is not in a position to make any payment towards costs. The trial court is directed to take note of this conduct of the petitioner while adjudicating the suit and in case similar delaying tactics are observed, order imposition of appropriate costs.

9. Having regard to the entire controversy, in the interest of justice and only to grant an opportunity to the petitioner to contest the suit on merits, the impugned orders deserve to be quashed and set-aside.

10. It has to be observed that the petitioner has appeared in person and in fact was not in a position to render assistance. However, by taking help of Advocate Mr. Yash Venkatraman, the controversy was pointed out. This Court appreciates the efforts taken by Advocate Mr. Yash Venkatraman in rendering valuable assistance to the Court.

11. In view of the above, following order is passed.

ORDER

I) The Writ Petition is allowed.

- II) The order dated 27.07.2023, passed by the trial court, directing the suit to proceed ex-parte is quashed and set-aside.
- III) Consequent orders dated 12.09.2024, 01.01.2025 and 04.09.2025 are quashed and set-aside.
- IV) The petitioner is permitted to place on record the written statement before the trial court.
- V) The trial court is directed to afford an opportunity to the petitioner to lead evidence, so that the suit is contested on merits.
- VI) In view of the controversy involved, the trial court is directed to decide the civil suit expeditiously and preferably within a period of six months from today.
- VII) The petitioner is directed to co-operate the trial court in contesting the suit without seeking unnecessary adjournments.

(PRAFULLA S. KHUBALKAR, J.)

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