

(2025) 07 BOM CK 0240

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No. 3255 Of 2025

Suryakant Bhagwandas Sharma

APPELLANT

Vs

Radhakishan Khushaldas Chawla And Others

RESPONDENT

Date of Decision : 15-07-2025

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2025) 07 BOM CK 0240

Hon'ble Judges : S. G. Chapalgaonkar, J

Bench : Single Bench

Advocate : A. N. Nagargoje, P. P. Mandlik

Final Decision : Dismissed

Judgement

S. G. Chapalgaonkar, J.

1. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing at admission stage.

2. The present petition filed under Article 227 of the Constitution of India takes exception to multiple orders passed by Civil Judge Senior Division, Dhule in Special Civil Suit No.108/2021, which are described in tabular form for brevity as under:

Sr. No

Date of Order

Exhibit Nos.

Particulars

1.

23.08.2024

1

Closing evidence of defendants

2

18.12.2024

59

Application to set aside no-cross order dated 10.04.2024 and permit to cross-examine plaintiffs' witness is rejected.

3

18.02.2025

61

Application to set aside no written statement order dated 19.04.2022 and accept his written statement alongwith counter claim is rejected.

3. The respondent nos.1 to 4 (original plaintiffs) filed Special Civil Suit No.108/2021 against petitioner and respondent nos.5 to 7 claiming relief of possession of suit property. On 20.09.2021, suit summon was served upon petitioner. On 10.02.2022, petitioner/defendant no.1 caused appearance in suit and matter was posted for his written statement on 11.03.2022. However, on 19.04.2022 due to failure of petitioner to file written statement, no written statement order came to be passed. The Trial Court framed issues. At this stage plaintiffs submitted application seeking permission to lead secondary evidence of sale deeds dated 30.10.1980 and 17.11.1993, which was allowed on 06.01.2023. The petitioner assailed said order in Writ Petition No.4160/2023 before this Court. However, Writ Petition has been withdrawn. On 25.09.2023, plaintiff no.1 filed his affidavit in lieu of examination-in-chief at Exhibit-30. The petitioner failed to cross-examine plaintiffs. Hence, vide order dated 10.04.2024, Trial Court passed no-cross order. On 24.06.2024, plaintiffs filed affidavit in lieu of examination-in-chief of their second witness. The matter was posted for cross-examination of PW-2 on 24.07.2024. However, petitioner failed to cross-examine him. Hence, Trial Court passed no-cross order. On same day, plaintiffs closed their evidence by filing pursis below Exhibit-52. On 23.08.2024, petitioner filed application below Exhibit-54 seeking time to file his evidence affidavit. However, same came to be rejected and evidence of petitioner is closed. On 06.09.2024, matter was posted for final argument, but adjourned time to time. Thereafter, respondents/plaintiffs concluded their arguments and on 17.12.2024, matter was posted for argument of defendants.

4. At this stage, petitioner/defendant no.1 moved application below Exhibit-59 to set aside no-cross order dated 10.04.2024 and permit him to cross-examine plaintiffs' witness. The Trial Court rejected application Exhibit-59 and posted matter for judgment. On 19.12.2024, petitioner moved another application below Exhibit-61 and prayed for setting aside no written statement order dated 19.04.2022 and accept his written statement alongwith counter claim. On

18.02.2025, Trial Court rejected petitioner's application Exhibit-61 and posted matter for judgment. At this stage present Writ Petition is filed challenging impugned orders.

5. Mr. Nagargoje, learned Advocate appearing for petitioner would submit that matter pertains to civil rights of parties as regards to immovable property. In such cases, decision on merit is solicited. Unless petitioner puts up his defence by way of written statement and cross-examine plaintiffs' witness, just decision would not be possible. Mr. Nagargoje submits that although some lapses can be imputed against petitioner, Trial Court could have granted opportunity to file written statement and defend suit by imposing compensatory costs. The petitioner cannot be unsuited for technical reasons. According to Mr. Nagargoje, learned Trial Court took hasty decision without appreciating adequate reasons mentioned in application Exhibit-61. Mr. Nagargoje submits that personal file of Advocate was handed over to Advocate at Aurangabad while filing Writ Petition against the order passed below Exhibit-22; however, it was misplaced and could be finally traced out in December 2024. Thereafter, application was moved below Exhibit-61, which ought to have been allowed. According to Mr. Nagargoje, there is no fault on the part of petitioner or his inaction was not intentional. No prejudice would be caused, if impugned orders are quashed and set aside and petitioner is permitted to file written statement, cross-examine plaintiffs' witness and lead his own evidence.

6. Per contra, Mr. Mandlik, learned Advocate appearing for respondent nos.1 to 7 strongly opposes prayers in Writ Petition contending that defendant no.1 appeared in suit in pursuance to suit summons on 10.02.2022 and appointed Advocate to defend suit. He remained watchdog in proceeding of suit and made applications seeking adjournments at various stages. Mr. Mandlik would point out that petitioner was well aware about no written statement order passed on 19.04.2022. Even, he had challenged subsequent order passed below Exhibit-22 in Writ Petition before this Court. The said Writ Petition was withdrawn on 26.06.2023. Thereafter, plaintiff recorded their evidence from 22.09.2023 till 24.07.2024 but petitioner failed to cross-examine witness leading to no-cross orders. The defendant was given opportunity to lead his evidence, however, he failed. Hence, his evidence was closed on 23.08.2024 and then matter reached to final stage. When matter was posted for judgment, petitioner filed application for setting aside no written statement order and to set clock back to the stage of filing written statement. According to Mr. Mandlik, no justifiable reasons are given for entertaining application for setting aside no written statement order or no-cross order passed against petitioner. The Trial Court recorded elaborate reasons while rejecting application below Exhibit-61 and refused to set aside no written statement order dated 19.04.2022. He would urge that no interference is required in impugned order looking to the conduct of petitioner.

7. Having considered submissions advanced on behalf of learned Advocates appearing for respective parties, it can be observed that respondents instituted

suit for possession in respect of suit property i.e. constructed building admeasuring 41 square meter situated at Lane No.4, Khol Galli, CTS No.2878/A at Dhule. The suit summons was served upon petitioner, he caused his appearance on 10.02.2022 and on his failure to file written statement, no written statement order has been passed on 19.04.2022. Even though the petitioner had knowledge of such order, he did not find it necessary to file an application for setting aside the order or to present a written statement. The plaintiffs proceeded with suit, tendered documents in evidence and then filed their affidavit in lieu of examination-in-chief. Even, at all these stages, defendants failed to cross-examine witnesses. The proceeding shows that petitioner was given sufficient opportunity at every stage. The proceeding was going on in his presence and to his knowledge. The petitioner's Advocate diligently filed applications seeking adjournment on multiple grounds at all stages of suit. However, did not cross-examine witnesses or took effective part in proceeding.

8. From March 2023 till 23.08.2024, all procedural steps from filing of written statement to closing of evidence took place in presence and knowledge of petitioner's Advocate and matter was posted for final argument from 06.09.2024 onward. Even at this stage, petitioner has not participated in proceeding. On 17.12.2024 matter was posted for petitioner's argument, at this stage he moved application below Exhibit-59 for setting aside no-cross order dated 10.04.2024 and sought permission to cross-examine plaintiffs' witness. The Trial Court rejected said application and posted matter for judgment.

9. At this stage, i.e. on 19.12.2024 first time petitioner filed application below Exhibit-61 seeking permission to set aside no written statement order. The conduct of the petitioner shows that he never intended to defend the suit, but was merely protracting the proceedings by hook or by crook.

10. At the stage of judgment, petitioner filed application for setting aside no-cross order and thereafter, filed application Exhibit-61 for setting aside no written statement order. Perusal of reasons in application nowhere suggests that petitioner was precluded by sufficient cause or reasons for not filing written statement till matter reached to the stage of judgment. All stages of suit from the stage of written statement to judgment were passed in presence of petitioner.

11. In this background, learned Trial Court observed that although in appropriate cases Court has power to permit filing written statement even at belated stage, the said power cannot be exercised to nullify entire rigour and impact of regulatory provisions of Code of Civil Procedure. Even, Trial Court has rightly placed reliance on observations of Supreme Court of India in case of Kailash Vs. Nanku (2005) 4 SCC 480 stating that Court is conferred with power to permit filing of written statement. The exercise of powers cannot be justified in each and every case. At this stage, reference can be given to the observations made by Supreme Court of India in case of Kailash (supra), which reads thus:

"The extension of time shall be only by way of exception and for reasons to be

recorded in writing, howsoever brief they may be, by the court. In no case, the defendant shall be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.”

12. In present case, petitioner failed to put forth single good reason for not filing written statement for more than two years after his appearance in suit till matter reached to the stage of judgment. The conduct of petitioner is not only negligent, but shows disregards to the procedural rigors and depicts arrogance and disrespect to the procedure of law. The Trial Court has rightly observed that when hearing is completed and matter is posted for judgment, parties have no further rights or privilege and Court has to pronounce judgment. This Court do not find any reason to interfere in order dated 18.02.2025 passed below Exhibit-61 rejecting prayer of petitioner to grant permission to file written statement/counter claim.

13. Even this Court has no reason to interfere in order dated 18.12.2024 passed below Exhibit-59, whereby petitioner sought permission to cross-examine witness, particularly when no-cross orders were passed in relation to PW-1 on 10.04.2024 and in relation to PW-2 on 24.06.2024. The petitioner sought to set aside those orders by filing application below Exhibit-59 on 17.12.2024. The said application sans no reasons at all. What prevented defendant from taking cross-examination, when plaintiffs’ witness was present in Court is not clarified. Even no explanation has been given as to why the application for setting aside no written statement order was not filed during the eight-month period when the suit proceedings were ongoing.

14. In this background, no case is made out to interfere in impugned orders in exercise of Writ jurisdiction of this Court. In result, Writ Petition stands dismissed.

15. Rule stands discharged.

16. At this stage, Mr. Nagargoje, learned Advocate appearing for petitioner seeks continuation of interim relief granted during pendency of writ petition.

17. For the reasons stated in order, request is rejected.