

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

***BEFORE***

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 25<sup>th</sup> OF JULY, 2023**

**MISC. PETITION No. 1778 of 2023**

**BETWEEN:-**

**SMT. PRIYA SONI W/O GIRDHARI LAL SONI, AGED  
ABOUT 63 YEARS, OCCUPATION: HOUSE WIFE  
MAHATMA GANDHI MARG, BADWAHA DIST.  
KHARGONE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY MS. PRANJALI YAJURVEDI, ADVOCATE)***

**AND**

**SMT. PARVIN BI W/O SHEIKH, AGED ABOUT 50  
1. YEARS, 88, TAJ NAGAR, KHAJARANA, KANADIA,  
INDORE (MADHYA PRADESH)**

**SHEIKH SOHAIL S/O SHEIKH RAFIQUE, AGED  
2. ABOUT 29 YEARS, OCCUPATION: PRIVATE JOB 88,  
TAJ NAGAR, KHAJRANA, KANADIA, INDORE DIST.  
INDORE (MADHYA PRADESH)**

**RUKHSAR D/O SHEIKH RAFIQUE, AGED ABOUT 28  
3. YEARS, OCCUPATION: PRIVATE JOB 88, TAJ  
NAGAR, KHAJRANA, KANADIA, INDORE DIST.  
INDORE (MADHYA PRADESH)**

**SHEIKH SHABAN KHAN S/O SHEIKH RAFIQUE,  
4. AGED ABOUT 26 YEARS, OCCUPATION: PRIVATE  
JOB 88, TAJ NAGAR, KHAJRANA, KANADIA,  
INDORE DIST. INDORE (MADHYA PRADESH)**

**TANVEER SHEIKH W/O AFZAL SHEIKH, AGED  
5. ABOUT 27 YEARS, OCCUPATION: HOUSE WIFE 88,  
TAJ NAGAR, KHAJRANA, KANADIA, INDORE DIST.  
INDORE (MADHYA PRADESH)**

**CHIEF MUNICIPAL OFFICER NAGAR PALIKA  
6. BARWAH BARWAH, DIST. KHARGONE (MADHYA  
PRADESH)**

**7. ATTA @ ATIK S/O HEIKH MAZID BARWAH, DIST.  
KHARGONE (MADHYA PRADESH)**

**8. IRFAN S/O SHEIKH MAZID BARWAH, DIST.**

- KHARGONE (MADHYA PRADESH)**  
9. **IMRAN S/O SHEIKH MAZID BARWAH, DIST. KHARGONE (MADHYA PRADESH)**  
10. **RANI W/O IMTIAZ BARWAH, DIST. KHARGONE (MADHYA PRADESH)**  
11. **ZUBEDA W/O SHEIKH RASHID BARWAH, DIST. KHARGONE (MADHYA PRADESH)**  
**FARRA @ SHEIKH FARID S/O SHEIKH RASHID**  
12. **BARWAH, DIST. KHARGONE (MADHYA PRADESH)**  
13. **SHEIK LAIK S/O SHEIKH RASHID BARWAH, DIST. KHARGONE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(SHRI P.R. BHATNAGAR, ADVOCATE FOR RESPONDENTS NO.1 TO 5)**

*This petition coming on for admission this day, the court passed the following:*

### **ORDER**

Heard finally with the consent of the parties.

1] This misc. petition has been filed by the petitioner/defendant No.1 under Article 227 of the Constitution of India against the order dated 17/01/2023, and 20/12/2022, passed in Civil Suit No.RCSA 01/2020 by Civil Judge, Class-I, Barwah (M.P.). Vide order dated 20/12/2022, the right of the petitioner/defendant No.1 to file the written statement has been closed whereas, vide order dated 17/01/2023, when the petitioner submitted her written statement, it has been refused to be taken on record on the ground that her right to file the written statement has already been closed on 20/12/2022.

2] In brief, the facts of the case are that a suit has been filed by respondents No.1 to 5 against the petitioner and the other respondents for declaration of title, permanent injunction and for

possession. In the aforesaid suit, the petitioner had also filed an application under Order 7 Rule 11 CPC which came to be rejected on 09/09/2022, and thereafter the matter was fixed for orders on applications under Order 39 Rule 1 and 2 of CPC, Order 6 Rule 17, and Order 1 Rule 10 of CPC. On 20/12/2022, the application under Order 1 Rule 10 CPC was allowed as also the application filed under Order 6 Rule 17 of CPC, and the defendants were also granted time to file consequential amendments and the case was fixed for consequential amendments.

3] The contention of the petitioner is that the petitioner was not aware that after the matter was directed to be fixed for consequential amendment, on the same day, in the subsequent proceedings, the court has also passed an order that as it has already been 34 months since defendants No.1, 8 and 9 have not filed the written statement, and no explanation has also been provided, hence, their right to file the same is closed.

4] Counsel for the petitioner has submitted that the aforesaid order has been passed after the proceeding was closed on 20/12/2022, after the application filed by the plaintiff under Order 6 Rule 17 CPC was allowed and the defendants were also granted time to file consequential amendments, as the Court had also signed the order sheet but it appears that after signing the order sheet, the matter was again taken up in the absence of defendant's counsel and her right to file the written statement has been closed. Thus, it is submitted that due to COVID-19 pandemic, the Courts proceedings were already

stayed from March 2020 to March 2022, and the delay caused in respect of the said period cannot be taken into account, and thereafter the matter was fixed before the trial Court for the application filed by the plaintiff under Order 1 Rule 10 and Order 6 Rule 17 of CPC and thus, it cannot be said that it was only on account of the negligence of defendant No.1 that the written statement was not filed.

5] Counsel appearing for respondents No.1 to 5, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out as the defendant No.1 was required to file the written statement strictly as provided under Order 8 Rule 1 of CPC i.e. within a period of 30 days from the date of service of summons on him or her. Thus, no illegality has been committed by the trial Court in rejecting the application.

6] Heard. On due consideration of submissions and on perusal of the record, it is found that as per the impugned order dated 20/12/2022, the petitioner/defendant No.1 was served on 05/02/2020, and thus, one month therefrom they were required to file their written statement and till 05/03/2020, there was no lock down and no closure of Courts due to COVID-19 which could have prevented the petitioner to file her written statement, and even after March 2022, when the Courts opened, the petitioner did not file her written statement as was required by her under the law, and in-fact, did not file the written statement in the garb of other pending applications, which is not the intention of the law. However, considering the fact that in the various order sheets of the trial Court filed by the

petitioner, it is not mentioned that the matter is also fixed for filing of the written statement, some leniency could have been shown by the learned judge of the trial court, and instead of closing the right of the defendant no.1 after the proceedings of 20/12/2022 were already closed, on last opportunity could have been granted to her. *While observing the same, this court makes it clear that merely if this fact is not mentioned in the order sheet that the defendant is also required to file its written statement, it would not be a reason for the defendants to not to file the written statement, as the provisions of Order 8 Rule 1 of CPC continue to govern the proceedings, and do not cease to operate in the absence of a specific order in this regard.*

7] Be that as it may, since on 17/01/2023, when the matter came up for hearing before the trial Court soon after 20/12/2022, the defendant No.1 also submitted her written statement but the same has not been taken on record by the learned Judge of the trial Court on the ground that her right to file written statement has already been closed on 20/12/2022, this court is of the considered opinion that the written statement can be taken on record. In such facts and circumstances of the case, this Court finds it appropriate to allow the defendant No.1 to file her written statement subject to a cost of Rs.5,000/- to be paid by the petitioner to the respondents No.1 to 5.

8] Accordingly, the impugned orders dated 17/01/2023 and 20/12/2022 are hereby set aside so far as they relate to closer of right of the petitioner/defendant No.1 to file written statement, and the learned Judge of the trial Court is requested to take on record the

written statement which shall be filed by the defendant no.1 on the next date of hearing and proceed further in accordance with law. The cost of Rs.5,000/- shall be paid by the petitioner to the respondents No.1 to 5 on the next date of hearing fixed by the trial Court.

Misc. petition is accordingly *allowed* and *disposed of*.

Sd/-

**(SUBODH ABHYANKAR)**

**JUDGE**

krsjoshi