

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3429 OF 2014

Kakasaheb s/o Suryabhan Jadhav,
Age: 42 years, Occ: Agri.,
R/o. Ballalisagaj, Tq. Vaijapur,
Dist. Aurangabad & anr

...Petitioners

versus

Machindra s/o Ambu Jadhav,
Age: 52 years, Occ: Agri.,
R/o. Ballalisagaj, Tq. Vaijapur,
Dist. Aurangabad

...Respondent

.....
Mr. V.P. Latange, Advocate for petitioners
Mr. U.D. Dalvi, Advocate for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 23rd NOVEMBER, 2015

ORAL ORDER :

In a suit, respondent-defendant filed his appearance on 11/10/2012 and thereafter was proceeded 'Without W.S.' After filing examination-in-chief on 27/09/2013 by petitioners, counter-claim along with application for setting aside 'No W.S. Order' was preferred by respondent-defendant on 24/10/2013 i.e. almost after 10 months of his appearance. Learned trial Court has allowed the said application subject to payment of costs of Rs.200/-.

2. Learned Counsel for the petitioners would urge that the

order is without any reasons and cause cited was not sufficient to set aside 'No W.S. Order'. According to him, the order impugned is liable to be set aside by remanding the matter.

3. Learned Counsel for the respondent-defendant would urge that application for filing of W.S. on record alongwith counter-claim has resulted into lodging present petition, as petitioners perhaps are aggrieved by filing of counter-claim. He would then urge that since trial is not at advanced stage, the trial Court, in the interest of justice, has permitted the filing of W.S.

4. With the assistance, having perused the impugned order, it is noticed that the reason that is mentioned in the impugned order for setting aside 'No W.S. Order' and placing on record W.S. is in the interest of justice and subject to costs of Rs.200/-.

5. Of course, the trial Court was right in exercising its discretion, particularly in the fact that trial is not at advanced stage. However, in my opinion, it will be appropriate to increase cost of Rs.200/- (Rs. Two hundred only) to Rs.2000/- (Rs. Two thousand only), to be paid before trial Court within period of two weeks from today. If the cost is not deposited within stipulated period, the order passed in favour of the respondent granting permission to file W.S.

shall be recalled/set aside.

6. The writ petition stands disposed of in above terms.

[N.W. SAMBRE, J.]

Tupe/23.11.15