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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6680 OF 2014

Shamrao s/o Bapurao Dhas
Age – 51 years, Occ – Agriculture
R/o Kolgaon, Taluka – Shrigonda,
District - Ahmednagar

PETITIONER

VERSUS

1. Adinath s/o Bapurao Dhas
Age – 61 years, Occ – Agriculture
R/o Kolgaon, Taluka – Shrigonda
District – Ahmednagar
2. Gorakh s/o Bapurao Dhas,
Age – 47 years, Occ – Agri and Service
R/o Opp Sainath Gas Agency,
Shrigonda, Taluka – Shrigonda
District – Ahmednagar

RESPONDENTS

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Mr. Umakant U. Wagh, Advocate for the petitioner
Mr. Nitin V. Gaware, Advocate for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 26th AUGUST, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.
2. The petitioner, aggrieved by order dated 1st July, 2014 passed by 4th Joint Civil Judge, Junior Division, Shrigonda on Exhibit-34 in Regular Civil Suit No. 186 of 2013, declining the

request to set aside "No W.S." order passed on 3rd January, 2014, is before this Court.

3. After hearing learned advocates for the parties, factual position appears to be that suit summons in the matter filed by present respondent No.1 for partition and separate possession had been served on the petitioner. Thereafter, on 3rd January, 2014 "No W.S." order came to be passed against both the defendants, the petitioner as well as respondent No.2. There was an application for interim injunction seeking restraint on alienation by the defendants. The petitioner, who is defendant No.1 in the suit, had submitted in writing that he is not intending to alienate the suit property and would not sell the same during pendency of the suit. Subsequently, defendant No.2–respondent No.2, appears to have moved the court seeking setting aside of order dated 3rd January, 2014, which came to be granted and the suit proceedings were continued. While the plaintiff had submitted his affidavit of examination in chief and was cross examined and further defendant No.2 as well had submitted his affidavit of examination in chief, it was thereafter, the petitioner had moved application Exhibit-34 seeking setting aside "No W.S." order, on 10th April, 2014 contending that he had been suffering paralysis and further that having regard to the

relationship amongst the parties, the parties were to have settlement in the matter and as such, in his estimate, he considered that the written statement may not be necessary, nor did he understand the implications of not filing the written statement in the matter.

4. Perusal of the impugned order shows that the court has considered that no material in respect of the contentions those had been submitted by the petitioner and having regard to the proceedings which had hitherto taken place, declined the request of the petitioner. Learned judge further considered decisions particularly the one reported in 2005 AIR (SC) 2441 "*Kailash V. Nankhu*", that extension for filing written statement beyond ninety days can be possible only in exceptional circumstances and upon satisfaction of the court.

5. Learned advocate for the petitioner refers to a decision of the Supreme Court reported in 2009 (1) Bom. C.R. 81 "*Sambhaji & Others V. Gangabai & Others*" which deals with the situation when parties are closely related and under the circumstances, the Supreme Court appears to have considered that said relationship should be given its due while considering the application for setting aside "*No W.S.*" order.

6. Looking at the relationship amongst the parties and that time span which may not be considered, from January to April, to be unreasonable and looking at that there is no serious dispute about ailment of the petitioner, it would be appropriate to avoid pedantic approach requiring stickling compliance. The inconvenience in the process being caused to the plaintiff can be taken care of by awarding costs.

7. Having regard to aforesaid, I deem it expedient that the writ petition deserves to be allowed, subject, however, to payment of costs.

8. As such, writ petition stands allowed in terms of prayer clause "B" subject to payment of costs of Rs.5000/- to be deposited in the trial court by the petitioner, within a period of four weeks from the date of receipt of writ of this order. Petitioner – defendant shall also submit his written statement within this period of four weeks and the matter accordingly be proceeded with as expeditiously as possible. The costs so deposited be allowed to be withdrawn by plaintiff – respondent No.1. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]