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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8744 OF 2014

Lotan Daga Bhamre (Patil) PETITIONER
Age-74 years, Occ - Agriculture
R/o Panjraan Sahakari Sakhar Karkhana
Bhadane, Taluka-Sakri
District-Dhule

VERSUS

1. Bhatu Daga Bhamre (Patil) RESPONDENTS
Age-77 years, Occ - Agriculture
2. Sanjay Bhatu Bhamre (Patil)
Age-39 years, Occ - Service and Agriculture

Both R/o Malpur, Taluka-Sakri,
District-Dhule

(Respondent No.2 presently residing at
Silvasa, Dadra nagar Haweli)

.....
Mr. A. K. Tiwari h/f Mr. N. L. Choudhari, Advocate for petitioner
Mr. S. V. Natu, Advocate for the respondents
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 11th FEBRUARY, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioner is defendant in Regular Civil Suit No.62 of 2013 filed by present respondents for injunction and

alternatively for possession in respect of property bearing Gut No. 716 more particularly referred to in the plaint.

3. The petitioner had put in his appearance in the suit, pursuant to the suit summons. It appears that 12th December, 2013 was the date on which the petitioner was expected to file his say as well as written statement. However, he did not file say or written statement and as such, an order came to be passed about no written statement on 30th January, 2014. An application came to be moved by the petitioner, on 10th February, 2014 for setting aside said order of no written statement. Learned judge had framed points for consideration in the application Exhibit-17 for setting aside no written statement order as to whether there was sufficient cause for not filing the written statement within prescribed time. Learned judge went on to observe that pursuant to procedural rules, the defendant was expected to file written statement within ninety days, however ninety days had been over and that the application does not depict any reason as to what prevented him from filing written statement within time and as such, with reference to a decision of the Supreme Court, observing that the party is not at liberty to proceed with the trial at its leisure and pleasure, the trial court has rejected the application under order dated 13th March, 2014.

4. It is being submitted on behalf of the petitioner that close to the relevant period, petitioner's wife had expired and the petitioner was under shock and it is further being submitted that the petitioner himself was not well and had been suffering heart disease. He purports to rely upon certain documents about heart disease annexed to the petition.

5. On the other hand, Mr. Natu, learned advocate appearing for the respondents submits that application is vacuous and there is no reason in the same for consideration of the application for setting aside no written statement order.

6. However, after hearing it transpires that the respondents - plaintiffs are not in a position to challenge the veracity about contentions about death of wife of the petitioner as well as about his ailment.

6. As such, the matter is to be looked into from that angle and lenient view is called for. I, therefore, deem it appropriate to set aside the order dated 30th January, 2014 and allow the petitioner to file written statement, in case he submits the same within a period of three weeks from today, further subject to the payment of costs of Rs.5000/- to be paid to the plaintiffs. The

costs be deposited with the trial court, within a period of two weeks from today. In case of failure to deposit the costs and to submit the written statement, within the stipulated period, herein above, the order dated 30th January, 2014 would stand revived. Writ petition stands disposed of. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]

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