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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10193 OF 2014

1.	Dinesh Jawaharlal Bora Age-28 years, Occ-Business & Agriculture R/o At Post Kolpewadi, Taluka-Kopargaon, District - Ahmednagar	PETITIONERS
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2.	Sangram Arun Jagtap Age-30 years, Occ-Business & Agriculture R/o Bhavani nagar, Burudgaon Road, Taluka and District - Ahmednagar	
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VERSUS

1.	Gopalrao Madhavrao Zodge Age-58 years, Occ - Agriculture & Business R/o At Post Bhingar, Taluka and District - Ahmednagar	RESPONDENTS
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2.	Ravindra Babasaheb Pisore Age-33 years, Occ - Agriculture & Business R/o Professor Colony Road, Savedi, Taluka & District - Ahmednagar	
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3.	Shivaji Paraji Chavan, Age-42 years, Occ-Agriculture and Business R/o Bhistbagh Naka, Savedi Taluka and District - Ahmednagar	
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4.	Lata Bahusaheb Jadhav	DELETED
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5.	Chandbhai Khawaja Husain Shaikh Korbo	DELETED
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6.	Chandkha Usmankha Pathan	DELETED
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Mr. Niteen. V. Gaware, Advocate for the petitioners
 Mr. Sanket S. Kulkarni, Advocate for respondents No.1 to 3

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 24th JUNE, 2015

ORAL JUDGMENT :

1. Learned advocate for the petitioners, on instructions seeks leave to delete respondents No.4 to 6 as far as present writ petition is concerned. Leave granted. Respondents No.4 to 6 stand deleted from the array of respondents, at the risk and peril of the petitioners.

2. Rule. Rule made returnable forthwith and heard learned advocates for appearing parties finally.

3. The petition has been moved against an order dated 22nd April, 2014, whereunder, the request under Exhibit-92 filed in Special Civil Suit No. 208 of 2011 by the present petitioners seeking setting aside of "no written statement order" passed way back on 21st February, 2012 has been turned down. The application contains reasons, *inter alia* that it was given to understand that a settlement is likely to take place and the vendor of the present petitioners would, in the circumstances, take care of the interest of the petitioners. Looking at the same and having regard to other occupations, application had not been

moved. Since no concrete action was being taken from a long time, that goaded the petitioners to file application Exhibit-92 in March, 2014. The application came to be rejected by the trial court. Despite many opportunities, those being not availed of by the present petitioners and having regard to the stages in suit having been advanced, the court found it difficult to exercise discretion in favour of the petitioners.

4. Learned advocate for the petitioners submits that having regard to various reasons for belated application and veracity of the same being not in serious dispute and further having regard to the order passed by this court on 26th November, 2014, wherein this court has given indication that lenient consideration is required, petition needs to be allowed.

5. Mr. Kulkarni, learned advocate appearing for the respondents - plaintiffs, however contends to that the reasons given under the application also refers to that for some political purpose the petitioners were occupied and in the circumstances the application has been moved in 2014, would not be a reason good enough to be considered leniently.

6. Though such a contention may carry substance, Mr. Kulkarni, learned advocate is not in a position to dispute veracity

of other reasons given for belated approach made for setting aside "no written statement" order. Further, a contest on merits would always be better for the parties in order to put permanent end to the *lis* among the parties. This court, under its order dated November 26, 2014 has given sufficient indication that the matter is to be considered leniently for contest on merits among the parties. However, while the matter is to be considered leniently and having regard to the facts of the present case, it would be appropriate to direct the trial court to take up the trial of the suit expeditiously without letting present petitioners dillydallying the same for technical reasons particularly in respect of procedural aspects. However, for the same the trial in the suit shall not be obfuscated and delayed.

7. Taking into account aforesaid, the writ petition is allowed. Rule is made absolute in terms of prayer clause "B". Issues, if required to be re-cast, be re-cast urgently and the parties, including the plaintiffs, be allowed to adduce evidence, if they wish to do so, having regard to pleadings by the present petitioners.

8. The suit be proceeded with as expeditiously as possible and preferably the same be decided within a period of six

months from the date of receipt of writ of this order.

9. The amount of Rs.25,000/- deposited by the petitioners pursuant to order dated 26th November, 2014, be transmitted to the trial court and be allowed to be withdrawn by the plaintiffs.

[SUNIL P. DESHMUKH, J.]

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