

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 1935 OF 2015

ANIL NIMBAJI BHOSALE  
VERSUS  
SADASHIV GAMBHIR CHAUDHARI AND OTHERS

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Advocate for Petitioner : Shri Bolkar Y. B.  
Advocate for Respondents 1, 3 & 4 : Shri Sant K.C.  
Respondent No.2 : Deleted.

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CORAM : RAVINDRA V. GHUGE, J.  
Dated: February 24, 2015

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PER COURT :-

1. Shri Bolkar, learned Advocate, submits on instructions that respondent No.5, who is original defendant No.2 in RCS No.99 of 2012 can be deleted. Deletion is permitted at the risk of the petitioner. Deletion to be carried out forthwith.

2. The petitioner is original defendant No.1. "No Written Statement" order was passed on 4.10.2012. Application Exhibit 52 was filed on 3.9.2014. Same has been rejected by the impugned order dated 29.10.2014. As such, the trial is proceeding without the Written Statement of the petitioner.

3. It is submitted that an irreparable harm would be caused to the petitioner, if the suit is decided without his Written Statement. Delay in not filing the Written Statement led to the passing of the "No Written

Statement" order and application for permitting the filing of Written Statement was filed practically after 23 months. The petitioner, however, submits that he would be rendered defenseless without the Written Statement.

4. Shri Sant, learned Advocate has appeared on behalf of the original plaintiffs on a caveat. He has strenuously supported the impugned order. Contention is that the matter was in fact, posted for judgment on 17.9.2014. On 3.9.2014, final oral submissions of the plaintiffs were advanced. He, therefore, invites my attention to Order IX Rule 7 of the CPC to contend that once the suit has been posted for judgment, no orders be passed for entertaining such applications.

5. Shri Sant further submits that inordinate delay, on the part of the petitioner, therefore, takes his case out of Rule 7 below Order IX of the CPC. No good cause or sufficient reasons have been cited, so as to justify permission to file the Written Statement. Alternatively, he prays for costs, not less than Rs.25,000/-, since the suit would be relegated back to the stage of filing of Written Statement, if this petition is allowed.

6. Having considered the submissions of the learned Advocates, I do find that the petitioner is guilty of negligence and delay. It is equally true, as has been contended by Shri Sant, learned Advocate that the clock would be reversed upon the proceedings before the trial Court and looking at the

conduct of the petitioner there is a serious apprehension that the petitioner would further delay the proceedings.

7. Nevertheless, not filing the Written Statement, may not give any advantage to the petitioner, since there would be no defense on his part. In light of the ratio laid down by the Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], I do not find that the petitioner would derive any advantage by not filing his Written Statement. Notwithstanding the same, the hardships caused to the plaintiffs will have to be reduced by imposing costs upon the petitioner.

8. In the light of the above, this petition is partly allowed. The impugned order, dated 29.10.2014, is set aside and application Exhibit 52 is allowed, subject to the petitioner depositing costs of Rs.15,000/- to be paid to the plaintiffs, which shall be deposited by the petitioner before the trial Court in RCS No.99 of 2012 on/or before 13.3.2015. On depositing the said costs, the Written Statement of the petitioner would be accepted. Needless to state, the petitioner shall not pray for extension of time, either for depositing costs or for filing Written Statement, both to occur on 13.3.2015. The plaintiffs shall be at liberty to withdraw the said costs in equal shares, without any conditions.

9. The trial Court shall note that the petitioner herein shall not be

permitted to seek adjournments on frivolous or unreasonable grounds in the said suit.

( RAVINDRA V. GHUGE, J. )

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