

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.861 OF 2015

RAMA @ POOJA SHANKAR GAIKWAD	PETITIONER
VERSUS	
MALLU SAMBHAJI MUNESHWAR AND OTHERS	RESPONDENTS

Mr.V.P.Sawant, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 04/02/2015

PER COURT :

1. I have heard the learned Advocate for the petitioner for quite some time.
2. The petitioner is the plaintiff in RCS No.62/2012 seeking partition and separate possession alongwith perpetual injunction.
3. The respondents / defendants did not file their written statement. "No written statement" order was passed on 31/08/2013. Application Exh.18 was moved by the respondents ON 06/09/2014 seeking permission for filing their written statement and for recalling the "No Written Statement" order. By the impugned order dated 19/09/2014, "No Written Statement" order was recalled and costs of Rs.200/- each was imposed on the 4 defendants. Needless to state,

they were permitted to file their written statements.

4. Grievance of the petitioner is that, though the Trial Court permitted the petitioner to submit her say, the application was allowed on 19/09/2014 before the petitioner could file her say and oppose the application. An opportunity of hearing should have been given to the petitioner before deciding application Exh.18.

5. After considering the submissions of the petitioner and upon going through the petition paper book, though I am not inclined to interfere with the impugned order, I find it appropriate to observe that the Trial Court should have allowed the petitioner to file her say before passing the impugned order. The application was filed on 06/09/2014 and was allowed on 19/09/2014. The Trial Court could have granted an opportunity to the petitioner to file her say. It is expected that the Court should give a reasonable opportunity to the opposing party to offer its say on an application, before deciding the same. Needless to state, if the opposing party attempts to delay the matter, the Court is always at liberty to record the conduct of the other side while passing an order on such an application.

6. In so far as the permission granted to the respondents to file

their written statement is concerned, I do not find that the impugned order could be faulted. Costs have been imposed on the defendants. Ends of justice have been achieved by permitting the respondents to file their written statement.

7. In the light of the above, this petition is disposed of with the above observations.

(RAVINDRA V. GHUGE, J.)