

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6484 OF 2015

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| 1. Smt. Shantabai Antu Bhosale |] |
| Age-64 years, Occu-Household, |] |
| 2. Sou. Sushma Maruti Bhosale, |] |
| Age-32 years, Occu-Agri, |] |
| 3. Sou. Shashikala Shivaji Bhosale, |] |
| Age-34 years, Occu-Agri, |] |
| 4. Shri. Vasudev Hari Bhosale, |] |
| Age-57 years, Occu-Agri, |] |
| All R/o-Mudal, Tal-Bhudargad, |] |
| Dist-Kolhapur. |].. Petitioners |

Versus

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| Shri. Ganapati Parsu Patil, |] |
| (Since deceased through his legal heirs) |] |
| a) Tanaji Ganapati Patil, |] |
| Age-45 years, Occu-Agri, |] |
| b) Satish Ganapati Patil, |] |
| Age-35 years, Occu-Agri, |] |
| c) Smt. Indubai Ganapati Patil, |] |
| Age-72 years, Occu-Agri, |] |
| All R/o-Mudal, Tal-Bhudargad, |] |
| Dist-Kolhapur. |].. Respondents |

Mr. A. S. Patil, for the Petitioners.

Mr. D. J. Dalal i/by Mr. S. B. Deshmukh, for the Respondent.

CORAM : R.M. SAVANT, J.
DATE : 1st OCTOBER, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 11.03.2014 passed by the Learned Joint Civil Judge Senior Division, Kolhapur, by which order the application Exh.28 filed by the Petitioners for setting aside of the “No Written Statement” order and for taking their Written Statement on record came to be rejected.

3. The Petitioners are the original Defendant Nos.1 and 4 to 6 in the suit in question which has been filed for declaration and injunction. The said suit is Regular Civil Suit No.1687 of 2012. The suit summons came to be served on the Defendants pursuant to which the Defendants appeared in the Court on 04.05.2012. The Defendants did not file the Written Statement in terms of the requirement of Order VIII Rule 1 of the CPC and hence, a “No Written Statement” order came to be passed against the Defendants on 10.07.2012. The Defendants thereafter filed the instant application on 19.11.2013. The ground made out for setting aside the “No Written Statement” order and for being permitted to file the Written Statement was that the lawyers were on strike pursuant to the agitation

for the establishment of a High Court Bench at Kolhapur. The said reason did not commend acceptance to the Trial Court. The Trial Court was of the view that “No Written Statement” order has been passed on 10.07.2012, whereas the agitation of the lawyers and the strike was between 28.08.2013 to 23.10.2013 which was much after the “No Written Statement” order came to be passed. The Trial Court accordingly rejected the said application by its order dated 11.03.2014.

4. Heard the Learned Counsel for the parties. The Learned Counsel for the Petitioners would seek to reiterate the case of the Petitioners/Defendant Nos.1 and 4 to 6 before the Trial Court namely that on account of the lawyers agitation in Kolhapur District that the Defendants were handicapped and could not file their Written Statement.

5. Per contra, the Learned Counsel appearing for the heirs of the original Plaintiff i.e. Defendant Nos.1(a) to 1(e) would support the impugned order and would contend that since the “No Written Statement” order was passed much prior to the agitation, the reason given by the Defendants for setting aside the said “No Written Statement” order has rightly not been accepted by the Trial Court. The Learned Counsel would contend that it is only in exceptional circumstances that the time to file Written Statement can be extended. The Learned Counsel sought to place reliance on the judgment of the Apex Court reported in (2009) 3 SCC 513

in the matter of Mohammed Yusuf Vs. Faij Mohammad and others. The Learned Counsel would therefore contend that no case for interference in the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is made out.

6. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The question that arises in the present Petition is whether the time to file the Written Statement as postulated by Order VIII Rule 1 of the CPC is required to be extended in respect of the Petitioners/Defendant Nos.1 and 4 to 6. It is well settled by the judgments of this Court as well as the Apex Court that order VIII Rule 1 of the CPC is held to be directory and not mandatory and for good and sufficient reasons the time to file the Written Statement can be extended. In so far as the instant case is concerned, the ground made out by the Defendants is that on account of the strike of the lawyers in Kolhapur District that the Defendants were handicapped and could not file their Written Statement. It is true that "No Written Statement" order was passed on 10.07.2012 and it is thereafter in November 2013 that the instant application came to be filed. The fact that the lawyers were agitating and were on strike is not disputed by the Learned Counsel for the Respondents but the Learned Counsel disputes the dates. However, he states that the said agitation has nothing to do with the steps which were required to be taken by the

Defendants immediately after the order dated 10.07.2012 came to be passed. Though the order was passed on 10.07.2012, the fact that the lawyers were on strike and were agitating would undoubtedly have a bearing on the case of the Defendants. The reason mentioned by the Defendants that on account of the lawyers being on strike, they could not take steps to file the instant application is also borne out by the fact that the application was filed immediately after the agitation had come to an end. The question that is posed is whether the ground made out by the Defendants is to be rejected outright or the equities have to be balanced in the sense that the Defendants are required to be given an opportunity to put up their defence on the pains of imposing costs on them. It is always desirable that the parties are given an opportunity to prosecute the proceedings on merits rather than being thrown out on technicalities. As indicated above, the suit is of the year 2012 and has not reached such a stage that if the clock is turned back the same would cause prejudice to the Plaintiff. It would therefore be just and proper to allow the Defendants to file their Written Statement. In so far as the judgment in *Mohammed Yusuf's* case (*supra*) is concerned, in the said judgment the Apex Court has referred to its judgment in *Kailash Vs. Nanhku* and observed that in the said judgment though the proviso to Order VIII Rule 1 was held to be directory it has been held in the said judgment that the Defendants may be

permitted to file the Written Statement after the period of 90 days only in exceptional circumstances. In the present case, the “No Written Statement” order was passed immediately after the period contemplated by Order VIII Rule 1 was over and thereafter as mentioned hereinabove the application could not be filed in view of the agitation by the lawyers in Kolhapur. In my view, therefore, the impugned order dated 11.03.2014 would have to be quashed and set aside and is accordingly quashed and set aside. The application Exh.28 would stand allowed. The Defendant Nos.1 and 4 to 6 would be entitled to file their Written Statement. The same to be done within four weeks from date. The Petitioners/Defendant Nos.1 and 4 to 6 to pay costs of Rs.5000/- to the Respondent 1(a) to 1(e) and produce evidence of it in the Trial Court. The Trial Court would accept the Written Statement only on the evidence of the costs being paid is produced by the Petitioners/Defendants. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.