

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1907 OF 2014

- | | | |
|----|--|---|
| 1] | Pradeep Shankarrao Salunkhe |] |
| | Age : 54 years, Occ : Agriculturist/Business |] |
| | R/o : Pare, Tal. Khanapur, dist : Sangli |] |
| | At present at : House No.7, Ishwari Street |] |
| | Laxmi Amman Nagar, Erikenchari |] |
| | Chennai-118, Tamil Nadu |] |
| | |] |
| 2] | Malaoji Shankarrao Salunkhe |] |
| | Age : 48 yrs. Occ : Agriculturist/Business |] |
| | R/at Pare, Tal. Khanapur, Dist : Sangli |] |
| | At present at : D.M. Stating, 446, Big Bazar St. |] |
| | Tiruchi No.8, Tamil Nadu |] |
| | |] |
| 3] | Kishore Shankarrao Salunkhe |] |
| | Since Deceased through his legal Heirs |] |
| | |] |
| | 3A. Vaishali @ Puja Kishore Salunkhe |] |
| | Age : 45 years |] |
| | |] |
| | 3B. Aditi Kishore Salunkhe |] |
| | Age : 24 years |] |
| | |] |
| | 3C. Pratik Kishore Salunkhe |] |
| | Age : 23 years. |] |
| | |] |
| | All 3a to 3c R/at : Balasaheb Bhosale Niwas |] |
| | In front of Ganga Hospital, Vita |] |
| | Tal : Khanapur, Dist. Sangli |] |
| | |] |
| 4] | Rameshkumar Shankarrao Salunkhe |] |
| | Age : 44 yrs, Occ : Agriculturist/Business |] |
| | R/at : Pare, Tal : Khanapur, Dist. : Sangli |] |
| | At present at ; S Ramesh, (Back Side, 2 nd floor) |] |
| | 17/33, Ayyalur Mutthya, Mudali Street, |] |
| | Kondi Thope, Chennai – 79 |] |
| | |] |
| 5] | Indumati Shankarrao Salunkhe |] |
| | Age : 82 yrs. Occ : Household |] |

R/at : Katar Building, In front of Bandgar
Hospital, Sawarkar Nagar, Vita
Tal. Khanapur, Dist. Sangli

]..... Petitioners
] (Org. Deft.No.1-4 &
] 8)

versus

- | | | |
|----|---|--------------------|
| 1] | Satish Shankarrao Salunkhe |] |
| | Age : 54 yrs. Occ : Agriculturist/Business |] |
| | R/o : Pare, Tal : Khanapur, Dist.Sangli |] |
| | Shikrapur, Tal : Shirur, Dist : Pune |] |
| | |] |
| 2] | Aruna Madhukar Pawar |] |
| | Age : 62 yrs. Occ : Household |] |
| | R/at : Chitadi, Tal : Khatav, Dist : Satara |] |
| | |] |
| 3] | Nalini Ashok Nikam |] |
| | Age : 60 yrs, Occ : Household |] |
| | R/at : No.18, Wheet Craft Road, |] |
| | Palace Court, Plot No.1, Nugam Bakam |] |
| | Chennai – 34. |] |
| | |] |
| 4] | Sujata Arun Tanpure |] |
| | Age : 50 yrs, Occ : Household |] |
| | R/at : Rahuri, Dist. Ahmednagar |] |
| | |] |
| 5] | Malan Shankarrao Salunkhe |] |
| | Age : 73 yrs, Occ : Household |] |
| | R/at : Katar Building, In front of Bandgar |] |
| | Hospital, Sawarkar Nagar, Vita |] |
| | Tal : Khanapur, Dist. Sangli |].... Respondents. |

Mr. Kuldeep S Patil for the Petitioners.
Mr. Avinash B Patil for the Respondent No.1.
Respondent Nos. 2 to 5 deleted by today's order.

CORAM : R. M. SAVANT, J.
DATE : 03rd September 2015

ORAL JUDGMENT :-

1 At the out set the learned counsel for the Petitioners seeks deletion of the Respondent Nos. 2 to 5 to the above Petition, who according to the

learned counsel for the Petitioners are formal parties considering the challenge raised in the above Petition. The said Respondents are accordingly deleted at the risk of the Petitioners. Amendment to be carried out forthwith.

2 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 18/06/2013 passed by the learned Civil Judge, Junior Division, Vita by which order the Application (Exhibit 74) filed by the Petitioners for seeking extension of time to file Written Statement and for the Written Statement being taken on record came to be rejected.

2 The Petitioners herein are the original Defendant Nos.1 to 4 and 8. In so far as the Defendant Nos.1 to 4 and 8 are concerned, the writ of summons came to be served upon them. In so far as the Defendant Nos.3, 5, 7 and 9 are concerned, no Written Statement order came to be passed against them on 29/07/2008. It appears that the Defendant No.3 expired on 16/10/2009 pursuant to which an application came to be filed for bringing his heirs on record on 18/06/2011. It is on 15/06/2012 that the said application came to be allowed and the heirs of the Defendant No.3 i.e. the Defendant Nos.3A to 3C were allowed to be brought on record. On the same day, no

Written Statement order came to be passed against the Defendant Nos. 1 to 4 and 8. It is thereafter that the instant application (Exhibit 74) came to be filed on 08/01/2013 and the ground made out was that the said Defendants were labouring under an impression that the advocate for the Plaintiff would take care of the matter and that they were bonafidely believing that the dispute would be settled. The said reason did not commend acceptance to the Trial Court who as indicated above, has rejected the said application by the impugned order dated 18/06/2013.

3 The learned counsel for the parties sought to urge contentions for and against the time for filing the Written Statement being extended and also for the Written Statement being taken on record. Whilst it was the contention of the learned counsel for the Petitioners that the Defendant Nos. 1, 2 and 4 are the residents of Chennai and in so far as the heirs of the Defendant No.3 are concerned, i.e. the Defendant Nos.3A to 3C, they were not served with the writ of summons, some indulgence would have to be shown to the said Defendants.

4 Per contra, the learned counsel for the Respondent No.1 original Plaintiff sought to oppose the above Petition by contending that in spite of the summons being served, the Defendants i.e. the Petitioners herein have not filed their Written Statement. The learned counsel would also question the reasons

mentioned in the application (Exhibit 74) and it was his submission that the said reasons do not entitled the Petitioners/Defendants for an extension of time.

5 Having heard the learned counsel for the parties, I have considered the rival contentions. It is well settled that Order VIII Rule 1 of the Code of Civil Procedure is directory and not mandatory and that for a good and sufficient reason, the time to file Written Statement as postulated in the said provision can be extended. It is also well settled that the Defendants have to make out a case as to why the Written Statement could not be filed by them within the time stipulated under Order VIII Rule 1 of the Code of Civil Procedure. In the instant case as indicated above the heirs of the Defendant No.3 i.e. the Defendant Nos.3A to 3C were brought on record on 15/06/2012 and thereafter it seems that the summons came to be issued to the said heirs. It is also required to be noted that the Defendant Nos.1, 2 and 4 are the residents of Chennai and may be that there was a communication gap between the said Defendants and other Defendants. The fact that the Defendants filed the instant application (Exhibit 74) on 18/01/2013 also cannot be lost sight of. It is therefore not a case where there has been a huge delay in filing the application for setting aside “No WS order” and for the Written Statement being taken on record. The suit in question being one for partition amongst the family members who claim through a common ancestor, in my view, it

would be just and proper to permit the Petitioners/Defendants to file their Written Statement so that there can be an effectual and complete adjudication of the dispute between the parties. The impugned order dated 18/06/2013 is therefore required to be quashed and set aside and is accordingly quashed and set aside. The application (Exhibit 74) would stand allowed. However, in the facts and circumstances of the present case, the Petitioners/Defendant Nos. 1 to 4 and 8 are directed to pay costs of Rs.3000/- to the Respondent No.1 – Plaintiff within four weeks from date. It is only on the evidence produced of the costs having been paid to the original Plaintiff that the Written Statement would be taken on record by the Trial Court. The above Writ Petition is accordingly allowed to the aforesaid extent. Rule is accordingly made absolute with the parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]