

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 414 OF 2013**

Dnyanoba Hiranman Bandal

..Petitioner

Vs.

Babasaheb Dinkarrao Sawant & Ors

..Respondents

Mr. Mohan Jadhav for the Petitioner

Mr. Rajesh More for the Respondent Nos.1 to 3

CORAM : R. M. SAVANT, J.

DATE : 22nd JANUARY, 2015

ORAL JUDGMENT

1 At the outset, the Learned Counsel appearing for the Petitioner seeks deletion of the Respondent Nos.4 to 7 as in the context of the challenge in the present Petition they are formal parties, being the Defendants in the Suit. The Respondent Nos.4 to 7 are accordingly allowed to be deleted.

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 6-11-2012 passed by the Learned 7th Joint Civil Judge Junior Division, Pune, by which order, the application Exhibit 50 for permitting the Defendant No.2 to file his Written Statement came to be rejected.

4 The Suit in question being Regular Civil Suit No.4389 of 2012 has been filed for cancellation of the two registered Sale Deeds dated 11-11-2009 and 8-6-2010 which are executed by the Defendant No.1 in favour of the Defendant No.2. In spite of the service of summons, the Defendant No.2 did not file his Written Statement and though opportunity was given on two occasions the Written Statement was not filed by the Defendant No.2. The reason put forth in the application Exhibit 50 is that through inadvertence the Written Statement remain to be filed. The Trial has also accepted the fact that delay is only about a year. However on the ground that the approach of the Defendant No.2 seems to be casual the Trial Court to rejected the said application, as according to the Trial Court the reason put forth by the Defendant No.2 could not be the plausible reason for non filing of the Written Statement.

5 In the instant case, it is required to be noted that the Suit is of the year 2012 and has still not advanced. Having regard to the dictum that a party should be allowed to prosecute the proceedings on merits rather than being thrown out on technicalities and also having regard to the fact that if cause is shown by the Defendant for extension of time to file the Written Statement, then the time can be extended, it would be just and proper to set aside the impugned order dated 6-11-2012 which is accordingly set aside. The application Exhibit 50 would resultantly stand allowed. The Defendant No.2 is permitted to file his Written Statement within 4 weeks from date. In the facts

and circumstances of the case, the Defendant No.2 to pay costs of Rs.3000/- to the Respondent Nos.1 to 3 within three weeks from date and evidence of the same produced before the Trial Court.

6 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]