

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5318 OF 2014

Union of India, through]
General Manager, Central Railway,]
Mumbai, CST].. Petitioners

Versus

1. Shri. Vasant Krishna Gavali,]
2. Shri. Shivaji Ramchandra Gavali,]
3. Shri. Rajendra Krishna Gavali']
~~4. Shri. Deepak Ramchandra Gavali~~].. Respondents

Shri. T. J. Pandian, for the Petitioners.
None for the Respondents though served.

CORAM : R.M. SAVANT, J.
DATE : 23rd OCTOBER, 2015

ORAL JUDGMENT

1. Rule, considering the challenge raised in the above Petition
made returnable forthwith and heard.

2. None appears for the Respondents though served.

3. The above Petition takes exception to the order dated 16.11.2013 passed by the Learned Civil Judge Senior Division, Kalyan, by which order the application filed by the Petitioners for taking their Written Statement on record came to be rejected.

4. The suit in question being RCS No.52 of 2005 has been filed for a declaration that the Plaintiffs i.e. the Respondents herein have superior rights on the suit land and that the Defendants/Railways have absolutely no legal rights over the same. The second relief sought is of an injunction against the Defendants i.e. Railways for interfering with the possession of the Plaintiffs. The suit summons it seems came to be served on the Defendants on 08.06.2005. Thereafter on 09.06.2015, the Defendants sought time to file their Written Statement which application came to be granted by an order passed on the same day i.e. on 09.06.2005. Thereafter the Defendants filed another application seeking time to file their Written Statement in view of the fact that the Defendants were securing fresh copies of the documents, as due to the heavy floods which took place in July 2005 the record was damaged/spoiled in the offices of the Railways. The said application was also allowed by the Trial Court by order dated 16.08.2005. However, the Defendants i.e. Petitioners herein could not file their Written Statement and hence filed the instant application on 05.10.2006 accompanied with the Written Statement and

praying that the said Written Statement be taken on record. In the said application, an order came to be passed on 13.06.2009. That in view of no reply being filed on behalf of the Plaintiffs the matter to be proceeded with. The said application came to be ultimately rejected by the order dated 16.11.2013 on the ground that no appearance was put up on behalf of the Defendants till 4.30 p.m. on the said day and that the Trial Court was not satisfied with the reasons mentioned in the application. It is the said order dated 16.11.2013 which is taken exception to by way of the above Petition.

5. Heard the Learned Counsel for the Petitioners i.e. original Defendants. None appears for the Respondents/original Plaintiffs though served. As indicated above, the application dated 05.10.2006 filed by the Defendants i.e. Petitioners to take their Written Statement on record has been rejected by the impugned order dated 16.11.2013. In my view, having regard to the fact that the earlier applications filed by the Defendants for permitting them to file their Written Statement being allowed and also considering the fact that the Defendants had sought time on account of the the heavy floods which took place in July 2005 in Mumbai the record was damaged/spoiled in the offices of the Railways. Since considering the instant application was filed on 05.10.2006 accompanied with the Written Statement, the interest of justice would be

served if the Trial Court is directed to take the Written Statement on record which is already filed with the application dated 05.10.2006. In that view of the matter, the impugned order dated 16.11.2013 is quashed and set aside and the application for the Written Statement to be taken on record is allowed. The Trial Court is accordingly directed to take the Written Statement filed on behalf of Union of India i.e. Railways on record. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with no order as to costs.

[R.M. SAVANT, J]