

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4483 OF 2014

Smt. Vasumati B. Shah and ors. .. Petitioners
vs.
Miss Kavya A. Shah and ors. .. Respondents

Ms Maya Sarkar i/b Madhukar Munim & Co. for the Petitioners.

CORAM : M. S. SONAK, J.
DATE : 8 May, 2015.

P.C. :-

1] Learned counsel for the petitioners states that all the respondents have been served. There is an affidavit of service on record, cognizance of which is taken in the order dated 5 May 2014.

2] This Court by its order dated 16 April 2014 had put the parties to notice that this petition would be heard and disposed of finally at the stage of admission.

3] This petition is directed against the order dated 22 January 2014 which disables the petitioners, i.e., original defendant Nos.2,3 and 4 from filing written statement. The impugned order, reads thus:

*Already limitation is over.
Reason not satisfactory.
Hence rejected.*

4] To say the least, the impugned order is totally laconic. The summons for settlement of issues were served upon the petitioners at various dates between 30 September 2013 and 10 October 2013. On 9 December 2013, time was granted to the petitioners to file their written statement and the matter was adjourned to 22 January 2014.

5] On 22 January 2014, i.e., the date on which the impugned order came to be passed, the petitioners applied for some additional time to file written statement stating therein that during the pendency of the suit, defendant No.1, who is son of defendant No.3, brother of defendant No.4 had expired on 12 November 2013. It was stated that on account of shock and grief the petitioners were unable to contact their advocates and finalize the contents of the written statement to be filed in the Court. It was also stated that defendant No.2 suffers from cardiac problem and considering her age, defendant Nos.3 and 4 have to spend considerable time with her.

6] In my judgment, considering that the summons for settlement of issues had been served upon the petitioners only by 10 October 2013 and the application seeking additional time was made on 22

January 2014, there was no justification for making the impugned order without even advertng to the reasons set out by the petitioners in their application. The impugned order, merely records conclusions, without any reasons therefor. The circumstance that there was a death in the family and one of the defendants was a cardiac patient of an advance age, was certainly a satisfactory reason which had been assigned by the petitioners.

7] Accordingly, the impugned order is set aside. learned counsel for the petitioners state that written statement on behalf of the defendant Nos.2 ,3 and 4 will be filed within a period of six weeks from today, without fail. Accordingly, if such written statement is filed within a period of six weeks from today, the same shall be taken on record.

8] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9] All concerned to act upon an authenticated copy of this order

(M. S. SONAK, J.)