

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

WRIT PETITION NO.5730 OF 2015

Chandrakant Ramchandra Lawangare

Since deceased through LRs

1a] Mrs. Mangala Chandrakant Lawangare & ors. : Petitioners

versus

Bhagwan Shankar Raut

since deceased through LRs

1a] Smt. Rukmini Bhagwan Raut & ors. : Respondents.

Mr. Kayval P Shah for the Petitioners.

Mr. Sachin P Shetye for the Respondent No.2.

CORAM : R. M. SAVANT, J.

DATE : 02nd December 2015

P.C.

1 The order dated 25/02/2015 passed by the learned Judge of the Small Causes Court, Mumbai allowing the Application (Exhibit 63) filed by the Respondent No.2 herein who is the original Defendant No.2 is taken exception to by way of the above Petition.

2 It appears that the said Defendant No.2 was joined as a party Defendant to the suit in the year 2006, however, did not file written statement in the time stipulated by Order VIII Rule 1 of the Code of Civil Procedure. In view thereof an order came to be passed by the Trial Court to proceed without written statement of the Defendant No.2 on 10/08/2011. It is thereafter that the instant Application (Exhibit 63) came to be filed by the Respondent No.2

herein i.e. the Defendant No.2. In the said Application the reasons why the written statement could not be filed by the Defendant No.2 were mentioned. It was averred in the said Application that though the written statement was prepared, it remained to be filed, and the Defendant No.2 was labouring under a bonafide impression that the written statement has already been filed. It is only after the Trial Court passed the order to proceed with the suit without written statement of the Defendant No.2, that it became known to the said Defendant No.2 that the written statement has not been filed.

3 The reasons mentioned by the Defendant No.2 in the Application (Exhibit 63) commended acceptance to the Trial Court, which has accordingly allowed the Application (Exhibit 63) albeit by imposing costs of Rs.2,000/- on the Defendant No.2.

4 The learned counsel appearing on behalf of the Petitioners Shri Shah seeks to place reliance on the judgment of a learned Single Judge of this Court reported in 2012(2) Mah. LJ 932 in the matter of Sheshrao Yadavrao Patil (Jadhav) and ors v/s. Wamanrao Yadhavrao Patil (Jadhav) and ors.

5 It is brought to the notice of this Court that the costs as directed by the impugned order have already been paid and written statement has already been taken on record. In my view, since the Trial Court deemed it appropriate

to exercise discretion in favour of the Defendant No.2 and since the Written Statement has already been filed pursuing to the impugned order, this Court does not deem it appropriate to interfere with the discretion exercised by the Trial Court in the writ jurisdiction. The above Writ Petition is accordingly dismissed. Hearing of the suit in question is however expedited.

[R.M.SAVANT, J]