

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11614 OF 2013

Manjulabai Gulab Khare and others ... Petitioners
Vs.
Vimalbai Ganpat Jadhav and others ... Respondents

Ms Jayshree Dabholkar i/b. Ms Deepa Matwankar for Petitioners.
Mr. Sachin Gite for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 17TH AUGUST, 2015

P.C. :

Not on Board. At the request of Mr. Gite, taken up for admission.

2. Heard Ms Dabholkar, learned Counsel for Petitioners and Mr. Gite, learned Counsel for respondent No.1. On the oral application made by

Ms Dabholkar, respondents No.2 to 6 are deleted as no relief is claimed against them. Rule. Mr. Gite waives service for respondent No.1. By consent of the

parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, original defendants No.1 to 5 have challenged the order dated 07.10.2013 passed by the learned Civil Judge, Junior Division, Chandwad. By that order, the learned trial Judge passed order of Suit to proceed without Written Statement of defendants No.1 to 5. In the impugned order, the learned trial Judge recorded that defendants No.1 to 5 were served with the suit summons on 21.07.2011 (wrongly typed as

‘2012’) and they filed application for permission to take written statement on record on 17.12.2011 i.e. after 2 months of 90 days stipulated period. The learned trial Judge rejected the application on the ground that the reason given by the defendants No.1 to 5 for delay i.e. want of information, is highly unjustifiable reason.

4. In view of the decision of this Court in the case of *Shailaja A. Sawant (Dr.) vs Sayajirao Ganpatrao Patil*, **2004 (2) Mh.L.J. 419** where this Court has held that Order VIII, Rule 1 of the Code of Civil Procedure, 1908 is directory and not mandatory, I am of the opinion that the learned trial Judge has committed error in rejecting the application, more so when delay was of 2 months. Hence, Rule is made absolute in terms of prayer clause (a) with no order as to costs and application exhibit-42 is allowed. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab