

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

WRIT PETITION STAMP NO.32816 OF 2014

1]	Shri Devidas Devaram Tandle	]	
	Age : 55 years, Occ : Agriculturist,	]	
		]	
2]	Shri Tukaram Popat Tandle	]	
	Age : 38 years, Occ : Agriculturist	]	
		]	
3]	Shri Ravindra Vithoba Tandle	]	
	Age : 40 years, Occ : Agriculturist	]	
		]	
	Nos. 1 to 3 residing at Dhondbe	]	 Petitioners
	Tal. Chandwad, District : Nashik	]	(Org. Defendants)

versus

1]	Murlidhar Dhondu Sadgire	]	
	Age : 70, Occ : Agriculturist	]	
		]	
2]	Shankar Bhika Sadgire	]	
	Age : 40, Occ : Agriculturist	]	
		]	
3]	Lilabai Somnath Sadgire	]	
	Age : 55, Occ : Agriculturist	]	
		]	
4]	Yashwant Kashinath Sadgire	]	
	Age : 70, Occ : Agriculturist	]	
		]	
5]	Anand Kashinath Sadgire	]	
	Age : 73, Occ : Agriculturist	]	
		]	
6]	Santosh Hanuman Binnar	]	
	Age : 35, Occ : Agriculturist	]	
		]	
7]	Ambadas Namdev Sadgire	]	
	Age : 50, Occ : Agriculturist	]	
		]	
8]	Kshinath Karbhari Sadgire	]	

	Age : 68, Occ : Agriculturist	]
9]	Baban Ganpat Sadgire	]
	Age : 54, Occ : Agriculturist	]
		]
10]	Shantaram Rambhau Sadgire	]
	Age : 43, Occ : Agriculturist	]
		]
11]	Raghu Ambu Sadgire	]
	Age : 53, Occ : Agriculturist	]
		]
12]	Balu Valu Sadgire	]
	Age : 48, Occ : Agriculturist	]
		]
	All R/at : Dhondbe (Mhausche Vadi)	].... Respondents
	Tal. Chandwad, District Nashik	] (Org. Plaintiffs)

Mr. Satyajeet P Dighe for the Petitioners.
None for the Respondents though served.

CORAM : R. M. SAVANT, J.
DATE : 03rd September 2015

ORAL JUDGMENT :

1 Rule, considering the nature of the challenge raised made returnable forthwith and heard.

2 The writ jurisdiction of this court is invoked against the order dated 30/11/2013 passed by the learned Civil Judge, Junior Division, Chandwad, Nashik by which order the application filed by the Defendant Nos. 1 to 3 for seeking extension of time to file Written Statement and for the Written Statement being taken on record came to be rejected.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the suit in question has been filed for simplicitor injunction restraining the Defendants from creating third party rights. In the said suit the summons came to be served on the Defendants and ultimately “No WS Order” came to be passed on 15/02/2012 against the Defendant Nos.1 to 3. It appears that the application for temporary injunction came to be allowed on 16/10/2012. It is thereafter that the application for setting aside “No WS Order” came to be filed on 5/11/2012. It is required to be noted that against the order passed by the Trial Court dated 16/10/2012 the Defendant Nos.1 to 3 filed Misc. Civil Appeal which came to be allowed on 21/02/2015. In the said application (Exhibit 23) the case made out by the Defendant Nos. 1 to 3 was that they were labouring under an impression that the suit in question would be settled as in fact another suit has been withdrawn by the Plaintiffs. However, the instant suit was not withdrawn and since they were labouring under the said impression that there has been an over run of time in the matter of filing the Written Statement.

4 The Trial Court considered the said application and rejected it on the ground that the application is bereft of any reason as to why the Written Statement was not filed within the time stipulated. As indicated above it is the said order dated 30/11/2013 which is taken exception to by way of the above Writ Petition.

5 In the instant case it is required to be noted that the Misc. Civil Appeal filed by the Petitioners i.e. the Defendant Nos.1 to 3 came to be allowed on 21/02/2015. Hence it could be said that after prosecuting the application for temporary injunction in which order went against them, the Defendants were prosecuting the Misc. Civil Appeal filed against the order passed by the Trial Court. The reasons mentioned by the Defendants that they were labouring under an impression that the dispute between the parties could be settled also cannot be lost sight of and can be said to be the plausible reason along with the other reasons which have been mentioned herein above viz. prosecution of the Appeal by the Defendants. Since Order VIII Rule 1 of the Code of Civil Procedure is held to be directory and not mandatory and since the time could be extended if the reasons are found to be acceptable, in my view, it would be just and proper to set aside the impugned order and permit the Defendant Nos.1 to 3 to file their Written Statement. The same to be done within four weeks from date. In the facts and circumstances of the case, this Court would have imposed costs of Rs.5,000/- on the Petitioners/Defendants to be payable to the Plaintiffs. However, no appearance is put up on behalf of the Plaintiffs in the above Petition though served, the Petitioners/Defendants to deposit the said costs of Rs.5,000/- with the State Legal Aid Fund within four weeks from date. It is only after the Defendants produce the evidence of having deposited the said costs, that the Written Statement would be taken on record by the

Trial Court. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with no order as to costs of the Petition.

[R.M.SAVANT, J]