

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1065 OF 2013**

Shivaji Sadhu Rasal)
Aged about 53 years Occ: Agriculturist)
R/o, Deulgaon Rasal Tal Baramati)
Dist. Pune) ..Petitioner

Vs.

1 Sambhaji Sadhu Rasal)
Aged about 50 years Occ: Agriculturist)
permanet r/o Deulgaon Rasal)
Tal Baramati, Dist. Pune)
At present residing at Anand Apartment)
2nd floor, Flat No.7, Shivaji Chowk,)
Chandan Nagar, Pune, 411 014)

2 Tukaram Hanumant Darade)
Aged about 70 years Occ: Agriculturist)
R/o, Near Tahsildar Office, Devbag)
At Post-Tal Baramati, Dist. Pune)

3 Sou Shakuntala Hanumant Darade)
Aged about 70 years Occ: Agriculturist)
R/o, Near Tahsildar Office, Devbag)
At Post-Tal Baramati, Dist. Pune)

..Respondents

Mr. K. B. Sonwalkar for the Petitioner
Mr. Sushant Prabhune for the Respondent No.1
None for the rest of the Respondents

CORAM : R. M. SAVANT, J.
DATE : 6th FEBRUARY, 2015

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties
made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 10-10-2012 passed by the Learned 4th Joint Civil Judge Junior Division, Baramati, by which order, the application Exhibit 21 filed by the Defendant No.1 for setting aside the No WS order and for being permitted to file the Written Statement by extending the time, came to be rejected.

3 It is not necessary to burden this order with unnecessary details. Suffice it to state that the reasons mentioned in Exhibit 21 namely that the Written Statement could not be filed as the Defendant No.1 had to procure some documents from the office of the Tahsildar, did not commend acceptance to the Trial Court. The Trial Court accordingly rejected the said application. In so far as the filing of the Written Statement which is governed by Order VIII Rule 1 of the Civil Procedure Code, it is well settled that the said provision is directory and not mandatory and that the Court if it so deems it appropriate considering the reasons mentioned, can extend the time. It seems that there is an overlap of about 100 days in filing the Written Statement by the Defendant No.1. The reason put forward by the Defendant No.1 namely that on account of certain documents which were to be obtained from the office of the concerned Tahsildar can be said to be a plausible reasons for the Defendant No.1 not filing his Written Statement. The delay as indicated above is only of about 100 days and is not such that the Defendant No.1 is to be deprived of putting up a defence in the Suit.

4 It is also required to be noted that in the reply filed by the Plaintiffs they have stated that the application may be allowed if the Court deems it fit subject to imposition of costs. In my view, having regard to the dictum that a party should be given an opportunity to prosecute the proceedings on merits rather than being thrown on technicalities, the impugned order dated 10-10-2012 is required to be quashed and set aside and is accordingly quashed and set aside, resultantly the application Exhibit 21 would stand allowed. The no WS order would consequently stand set aside and the Defendant No.1 would be entitled to file his Written Statement. The same to be done within 4 weeks from date. In the facts and circumstances of the case, the Defendant No.1 to pay costs of Rs.5000/- to the Plaintiffs, the same to be also done within 4 weeks and the evidence of the same to be filed in the Trial Court. The Petition is allowed to the aforesaid extent. Rule is made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]