

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2844 OF 2016

1. Shaikh Munawwar Shaikh Munir
Age: 32 years, Occu.: Labour,
R/o Garka Bangla, Tq. Kannad,
Dist. Aurangabad.

2. Shaikh Haroon Sk. Munir
Age: 51 years, Occu.: Labour,
R/o Siyaposhwadi Kala Bangla,
Dargah Street, Room No.1,
Mahim, Mumbai-16.

3. Shaikh Farooque Sh. Munir
Age: 49 years, Occu.: Business,
R/o Siyaposwadi Kala Bangla,
Dargah Stre, Room No.1,
Mahim, Mumbai-16.

4. Rubina Shaikh Shakil
Age: 42 years, Occu.: Housewife,
R/o Siyaposhwadi Kala Bangla,
Dargah Street, Room No.1,
Mahim, Mumbai-16.

..PETITIONERS

VERSUS

1. Shaikh Rauf Shaikh Munir
Age: 53 years, Occu.: Labour,
R/o Siyaposhwadi Kala Bangla,
Dargah Street, Room No.1,
Mahim, Mumbai-16.

2. Praveen Kausar Khan
Age: 38 years, Occu.: Household,
R/o Siyaposhwadi Kala Bangla,
Dargah Street, Room No.1,
Mahim, Mumbai-16.

3. Saira Begum Shaikh Mujib
Age: 34 years, Occu.: Household,
R/o Kach ka Bangla, Kannad,
Dist. Aurangabad.

..RESPONDENTS

....
Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for petitioners.
Mr. S.F. Patel, Advocate for respondents.

....

CORAM : T.V. NALAWADE, J.
DATED : 06th DECEMBER, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard both sides with consent for final disposal.

2. The petition is filed to challenge the order made by Civil Judge, Senior Division, Aurangabad on Exhibits 20 and 22 in Special Civil Suit No. 279 of 2015. In partition suit filed against present petitioner, summons was duly served on all defendants but only Defendant Nos. 1 and 4 appeared. Defendant Nos. 2 and 3 did not appear so ex-parte order made against them. As Written Statement was not filed in given time, No W.S. order was made against Defendant Nos. 1 and 4. Application at Exhibit 18 was filed for setting aside No W.S. order and also ex-parte order made as against remaining defendants. This application was allowed on 19th January, 2016 by the Trial Court subject to payment of cost of Rs.3,000/- to each defendant prior to 27th January, 2016 in the District Legal Aid Office.

3. It appears that costs of Rs.3,000/- by each defendant was not deposited on or before 27th January, 2016. On last date, application was moved for extension of time fixed by the Court. This application was rejected by the Court and then application was moved at Exhibit 22 for granting permission to deposit amount on that day. On 03rd February, 2016, readiness was shown to deposit the amount in the Court but this application was also rejected and so defendants have come to this Court.

4. Learned Counsel for plaintiff submitted that sufficient time was given by the Trial Court and even ex-parte order was set aside and time was given to deposit the cost amount but no diligence was shown in depositing the amount. Learned Counsel submitted that it is unnecessary harassment to plaintiff. The suit is of the year 2015 and aforesaid events took place immediately after completion of 90 days, the period fixed for filing written statement. This Court holds that subject to some costs, one more opportunity needs to be given.

5. Learned Counsel for petitioner placed reliance on one case reported as **(2016) 6 SCC 245 (Nashik Municipal Corporation Vs. R.M. Bhandari and Another)**. This Court has observed with regard to the discretion given under provision of Section 148 ad 151 of the Code of Civil

Procedure, 1908. It cannot be disputed that even after completion of 90 days, written statement can be accepted and in that regard also power is to the Court to exercise discretion but the written statement could not come on record only due to non payment of cost. Learned Counsel for petitioner submitted that some petitioners are residents of Mumbai and due to that the amount was not deposited.

6. This Court holds that petitioners need to pay amount of Rs.3,000/- (Rupees Three Thousands Only) by each as directed by the Trial Court. This amount is to be deposited in the Trial Court prior to 23rd December, 2016. In addition to that, the petitioners together have to pay amount of Rs.8,000/- (Rupees Eight Thousands Only) to the plaintiff as cost of the proceeding and the entire amount is to be given to the plaintiff. Subject to that condition, petition is allowed. Rule made absolute in those terms. If amount is not deposited, it is to be presumed that present proceeding is dismissed.

(T.V. NALAWADE, J.)

SSD