

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3778 OF 2015
(Baliram Namdeo Adkine Vs. Seetabai Umaji Adkine and others)

Mr.S.P.Katneshwarkar, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/09/2016

PER COURT :

1. Respondent No.1, as per the office report, has refused to accept court notice. Respondent Nos. 2 and 3 have already been served. No appearance is entered either in person or through an Advocate.
2. I have heard the learned Advocate for the petitioner.
3. The only issue raised in this petition is as to whether the “No W.S. order” passed on 22/01/2015 in RCS No.159/2014 deserves to be recalled in the light of an application filed for the said purpose on the same date.
4. The learned Trial Court has passed the “No W.S. order” against the petitioners/defendants on 22/01/2015. On the same day, an application praying for recalling the order was filed alongwith the copy of the written statement of the petitioners / defendant Nos. 3 and 4. By the impugned order dated 10/02/2015, the said application has been rejected on the ground that the petitioners did

not explain how the said order is erroneous.

5. I find that the impugned order deserves to be quashed and set aside. The learned Trial Court, rather than adopting a pragmatic approach, has taken a pedantic view. When the application for setting aside “No W.S. order” was filed on the same day on which the “No W.S. order” was passed, ends of justice would have been met by recalling the “No W.S. order” especially in the light of the fact that the written statement of the petitioners was accompanying the application Exh.19 for recalling the No W.S. order. To say the least, the concerned Trial Judge has passed an unexpected and unusual order.

6. This petition is, therefore, allowed. The impugned order dated 10/02/2015 is quashed and set aside. The “No W.S. order” dated 22/01/2015 is set aside and application Exh.19 is allowed.

7. The Trial Court is directed to accept on record the written statement filed by the petitioner/defendant Nos. 3 and 4.

(RAVINDRA V. GHUGE, J.)