

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7165 OF 2015

1. Smt. Tulsabai Chandrabhan Raut,
Age : 85 yrs, Occu : Household.
2. Shri. Dilip Chandrabhan Raut,
Age : 46 yrs, Occu : Service.
3. Shri. Shashikant Chandrabhan Raut,
Age : 43 yrs, Occu : Labour work.

All R/o Nampur, Tq. Satana,
District : Nasik.

... Petitioners

Versus

1. Shri. Ganpat Radhaji Rathod,
Age : 74 yrs, Occu : Agril.
2. Shri. Dilip Radhaji Rathod,
Age : 61 yrs, Occu : Agril.

Both R/o Wadala Mahadeo,
Tq. Shrirampur, Dist. Ahmednagar

... Respondents

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Advocate for Petitioners : Mr. N. C. Garud
Advocate for Respondent Nos. 1 and 2 : Mr. Vishal S. Badakh
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CORAM : V. K. JADHAV, J.

DATED : 13th JANUARY, 2016

ORAL JUDGMENT (PER V. K. JADHAV, J.) :-

1. Rule. Rule made returnable forthwith. By consent of parties, heard finally.
2. The respondents/original plaintiffs have instituted Regular Civil Suit No. 29 of 2014 against the present petitioners/original defendants for a

decree of perpetual injunction. Since the petitioners failed to file written statement, "No W.S." order came to be passed against them. Thereafter, on 17.07.2014. petitioners/original defendants have filed application Exh.29 for setting aside the said "No W.S." order by condoning delay caused in presenting the said application. Learned Judge of the trial court, by impugned order dated 07.11.2014 passed below Exh.29 in RCS No. 29 of 2014, refused to condone delay and accordingly, rejected the application. Hence this writ petition.

3. Learned counsel for the petitioners submit that the suit is instituted for decree of perpetual injunction. Learned counsel submits that petitioners are the owners of the suit property and respondents/original plaintiffs are the tenants. On account of illness of petitioner No.1, written statement could not be filed within time and even delay has been caused for moving the said application because of her illness.

4. Learned counsel for the respondents submits that delay is not properly explained and learned Judge of the trial court has rightly rejected the application Exh.29.

5. The suit came to be instituted in the month of January, 2014 and in response to the summons issued and served on the petitioners/original defendants, the petitioners put their appearance before the trial court on 18.02.2014. Even though, no specific order about "No W.S." is passed by the trial court, as abundant precaution, the petitioners/original defendants

have filed application Exh.29 on 17.07.2014 for setting aside the "No W.S." order along with an application for condonation of delay. In view of this, by imposing some cost on the petitioners/originals defendants, application Exh.29 can be allowed. Hence the following order :

O R D E R

- I. Writ Petition is hereby allowed.
- II. Order dated 07.11.2014 passed by learned Civil Judge Senior Division, Shrirampur, below Exh. 29 in RCS No. 29 of 2014 is hereby quashed and set aside.
- III. Application Exh. 29 is hereby allowed with the following condition :

The petitioners/original defendants shall pay cost of Rs.2,000/- (Rupees two thousand only) to the respondents/original plaintiffs within a period of two weeks from today. Cost shall be deposited before the trial court.

- IV. Writ Petition is disposed of. Rule is made absolute accordingly.

(V. K. JADHAV, J.)

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