

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 6357 OF 2016

1. Sau. Alka w/o. Sanjay Adhav,
Age 47 years, Occu. Agriculturist,
2. Shri. Gangadhar Natha Bhingare,
Age 54 years, Occu. Agriculturist,

Both R/o. Manori, Tq. Rahuri,
Dist. Ahmednagar.

....Petitioners.

Versus

1. Shri. Sahebrao Dagdu Bachkar,
Age 54 years, Occu. Agriculturist,
2. Shri. Gorakshanath Sahebrao Bachkar,
Age 23 years, Occu. Agriculturist,

Both R/o. Manori, Tq. Rahuri,
Dist. Ahmednagar.
3. Sau. Babetai Balasaheb Shinde,
Age 48 years, Occu. Agriculturist,
4. Shri. Dattatray Pandurang Adhav,
Age 70 years, Occul. Agriculturist,
5. Shri. Vithal Pandurang Adhav,
Age 67 years, Occu. Agriculturist,
6. Shri. Baban Pandurang Adhav,
Age 65 years, Occu. Agriculturist,
7. Shri. Bhagwat Pandurang Adhav,
Age 62 years, Occu. Agriculturist,
8. Prayagabai Vitthal Adhav,
Age 61 years, Occu. Agriculturist,
9. Shri. Kalpana Janardhan Adhav,
Age 40 years, Occu. Agriculturist,

10. Shri. Bhau Genu Shinde,
Age 70 years, Occu. Agriculturist,
Resp. Nos. 3 to 10 R/o. Village
Manori, Tq. Rahuri, Dist. Ahmednagar.
11. Shri. Manohar Genu Shinde,
Age 60 years, Occu. Agriculturist,
12. Shri. Dattatray Sajan Mhase,
Age Major, Occu. Agriculturist,
13. Meena Haribhau Tarde,
Age Major, Occu. Household,
14. Sindhubai Sajan Mhase,
Age Major, Occu. Household,

Resp. Nos. 11 to 14 R/o. Aradgaon,
Tq. Rahuri, Dist. Ahmednagar.

[Resp. Nos. 3 to 14 were deleted
as per the order made by this
Court on 21.6.2016]

....Respondents.

Mr. N.B. Patekar, Advocate for petitioners.

Mr. R.A. Lade h/f. Mr. A.A. Nimbalkar, Advocate for respondent
Nos. 1 and 2.

CORAM : T.V. NALAWADE, J.

DATED : 20th December, 2016.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2) The petition is filed to challenge the order made on
Exh. 38 in Regular Civil Suit No. 409/2011. The suit is pending in

the Court of Civil Judge, Junior Division, Rahuri. The suit is filed by present respondents for relief of injunction and for fixing the boundary marks and for removal of encroachment, if any, made by the defendants.

3) 'No W.S. Order' is made against the present petitioners, defendants and the application filed by them for setting aside the 'No W.S. Order' and for delay condonation is rejected by the Trial Court. It appears that after about four years the application for setting aside the 'No W.S. Order' was filed.

4) In view of nature of dispute, which can be seen in the plaint, this Court holds that opportunity needs to be given to the defendants to take the decision on merits. However, plaintiff is required to spend on present proceeding and there is possibility that defendants are playing delaying tactics. In view of these circumstances, this Court holds that some cost needs to be imposed on defendants for allowing them to file written statement.

5) In the result, the petition is allowed, subject to depositing of cost of Rs. 15,000/- in Trial Court on or before 6.1.2017. The amount of Rs. 10,000/- is already deposited by the

petitioner. The remaining amount of Rs.5,000/- is to be deposited in this Court prior to 6.1.2017. If the amount is deposited in this Court, that amount is to be sent to the Trial Court. If the amount is deposited prior to aforesaid date, it is to be presumed that 'No W.S. Order' is set aside and opportunity needs to be given to defendants to file written statement and it is to be presumed that delay, if any, caused in filing written statement is condoned. If the amount is not deposited, it is to be presumed that the present petition is dismissed. The suit is to be expeditiously disposed of and in any case, within six months from 6.1.2017.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/