

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

WRIT PETITION NO. 8627 OF 2015

1. Waman S/o Abaji Lobhe,
Age: 72 years, occ: Agril.
R/o: Kanegaon, Tq. Lohara,
District osmanabad.

2. Shrimant S/o Abaji Lobhe,
Age: 65 years, Occ.: Agri.,
R/o as above.

...PETITIONERS
(Ori.Defts.No.1 & 4)

versus

1. Omprakash Vyankatrao Lobhe,
Age: 48 years, Occ: Agril.,
R/o: Kanegaon, Tq. Lohara,
District Osmanabad.
2. Kamlakar S/o Vyankatrao Lobhe,
Age: 45 years, occu: Agri.
R/o : as above.
3. Bhaskar S/o Vyankatrao Lobhe,
Age: 42 years, occu: Agri.,
R/o as above.
4. Vijaykumar S/o Waman Lobhe,
Age: 42 years, Occ: Pvt. Service,
R/o : As above.
At present R/o Dhumalwadi,
Tq. Akole, Dist. Ahmednagar.
5. Anilkumar S/o Waman Lobhe,
Age: 30 years, Occu: Agri & Service,
R/o as above.
At present Hingoli, Dist. Hingoli

...RESPONDENTS
(Respdt No. 1 to 3
are ori. Plff. and
respdt. Nos. 4 and 5
are ori.Defts.No.2 & 3)

WITH

WRIT PETITION NO. 8628 OF 2015

1. Vijaykumar S/o Waman Lobhe,
Age: 42 years, Occ: Pvt. Service,
R/o : Kanegaon, Tq. Lohara,
District Osmanabad
At present R/o Dhumalwadi,
Tq. Akole, Dist. Ahmednagar.

2. Anilkumar S/o Waman Lobhe,
Age: 30 years, Occu: Agri. & Service,
R/o : as above.
At present Hingoli, Dist. Hingoli

...PETITIONERS
(Ori.Defts. No.2 & 3)

versus

1. Omprakash Vyankatrao Lobhe,
Age: 48 years, Occ: Agril.,
R/o : Kanegaon, Tq. Lohara,
District Osmanabad.
2. Kamlakar S/o Vyankatrao Lobhe,
Age: 45 years, occu: Agri.
R/o : as above.
3. Bhaskar S/o Vyankatrao Lobhe,
Age: 42 years, occu: Agri.,
R/o : as above.
4. Waman S/o Abaji Lobhe,
Age: 72 years, occ: Agri.
R/o : Kanegaon, Tq.Lohara,
District Osmanabad.
5. Shrimant S/o Abaji Lobhe,
Age: 65 years, Occ.: Agri.,
R/o : as above.

...RESPONDENTS
(Respdt No. 1 to 3
are ori. Plff. and
respdt. Nos. 4 and 5
are ori. Defts.No.1 & 4)

.....
Mr. N.L. Jadhav, Advocate for petitioners
Mr. P.V. Barde, Advocate for respondents No. 1 to 3
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 10th MARCH, 2016.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for appearing parties finally, with consent.
2. Petitioners - original defendants No. 1 to 4 are before this court against orders dated 02-05-2015 below Exhibits - 79 and 81 passed by civil judge, junior division, Lohara, District Osmanabad in regular civil suit

No. 64 of 2008 whereunder their request for setting aside "No written statement" and "No say" orders against defendants No.1 and 4 and for setting aside "*ex-parte* order" against defendants No. 2 and 3, has been turned down.

3. After hearing learned counsel for parties, it transpires that despite service of suit summons, defendants No. 2 and 3 - petitioners in writ petition no. 8628 of 2015 had not caused their appearance in the suit. Under the circumstances, "suit to proceed *ex-parte*" orders were passed against them on 06-11-2014 and 23-09-2003 respectively. Though defendants No. 1 and 4 - petitioners in writ petition No. 8627 of 2015 had appeared in the suit, however, failed to file their written statement and say to the application for temporary injunction. As such, "No written statement" and "No say" order was passed against them on 12-04-2005. It appears that petitioners had not been diligent in prosecuting the matter, and as such, aforesaid orders came to be passed.

4. According to learned counsel for respondents No. 1 to 3, the matter had been transferred from Omarga court to Lohara court. The parties to suit thereafter appeared in the proceedings and subsequently the petitioners - defendants prosecuted the matter and in fact, the evidence of plaintiffs has also been led.

5. According to learned counsel for respondents, petitioners in writ petition No. 8628 of 2015 filed application Exhibit-79 for setting aside "suit to proceed *ex-parte*" order passed against them on 06-11-2014 and 23-09-2003 respectively, whereas petitioners in writ petition No. 8627 of 2015 filed application Exhibit-81 for setting aside "No written statement" and "No say" orders against them on 12-04-2005, on 22-01-2015.

According to him, the defendants are deliberately procrastinating the matter keeping away the plaintiffs from enjoyment of their legitimate rights in the suit properties. Alternatively, having regard to the say filed to applications Exhibits-79 and 81 heavy costs was requested to be imposed. It is further being submitted by learned counsel for respondents-plaintiffs that plaintiffs had been put in expenses due to the conduct of the defendants and had to serve the certain defendants by paper publication. It is therefore, requested by him that no indulgence be given to the request of the petitioners and the costs be enhanced having regard to say filed by plaintiffs to the applications Exhibits-79 and 81.

6. Taking into account aforesaid and that the parties appear from *muffosil* area, petitioners - Waman S/o Abaji Lobhe and Shrimant S/o Abaji Lobhe, appear to be a senior citizens having age of above 65 years, the respondents have also been amenable to accept costs, considering that hall mark of jurisprudence wherein decision on merits is preferred, the situation can be met with by allowing the writ petitions, however, subject to payment of costs, to take care of the inconvenience caused to the other side.

7. As such, the petitions stand allowed. Impugned orders dated 02-05-2015 below Exhibits-79 and 81 passed by civil judge, junior division, Lohara, District Osmanabad in regular civil suit No. 64 of 2008 stand set aside. Applications Exhibits-79 and 81 stand allowed on the condition that petitioners shall deposit an amount of Rs.15,000/- in each of the petition, to be paid to the plaintiffs, in the trial court, within a period of six weeks from today. In case, amount of costs is not deposited by the petitioners within the stipulated period, the impugned orders would stand

revived and writ petitions shall be deemed to have been dismissed without further reference to the court.

8. Mr. Barde, learned counsel for the respondents-plaintiffs at this stage requests for expeditious disposal of the suit which has been pending since 2003. Mr. Jadhav, learned counsel for petitioners also requests for expeditious disposal of another suit pending between the parties.

9. Having regard to that, suits pending between the parties are in respect of the same subject-matter, civil judge, junior division, Lohara, District Osmanabad may decide both the suits as expeditiously as possible, preferably within a period of nine months from the date of receipt of writ of this order.

10. Writ petitions are allowed in aforesaid terms. Rule is made absolute accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK