

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

915 WRIT PETITION NO. 7130 OF 2015

NASIR KHAN S/O NOOR KHAN PATHAN AND OTHERS

VERSUS

MALEKHA BEGUM W/O WAHED KHAN PATHAN

WITH

CIVIL APPLICATION NO. 1504 OF 2016

IN WP/7130/2015

MALEKHA BEGUM WAHED KHAN PATHAN

VERSUS

NASIR KHAN NOOR KHAN PATHAN AND OTHERS

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Advocate for petitioner : Mr.D.P. Palodkar

Advocate for Respondent: Mr. Tilve Subhas P

CORAM : V. K. JADHAV, J.**DATE : 5th February, 2016****PER COURT :**

1. Heard finally by consent of the parties at admission stage.

2. The petitioners/orig. defendants have challenged the order passed by the trial court below Exh.15 in RCS No. 47/2014. The petitioners/defendants have not filed written statement, though appeared in the suit. "No W.S." order came to be passed against them on 04.09.2014. The petitioners/defendants then filed application at Exh.15 on 09.02.2015 for setting aside the said "No W.S." order. However, the trial court, by order

dated 26.03.2015, rejected the said application. Hence this writ petition.

3. The learned counsel for the petitioners submit that the suit is instituted for partition and separate possession of the immovable property and therefore, it would be necessary in the interest of justice to allow the defendants to file written statement on record.

4. The learned counsel for the respondent/original plaintiff submits that even though sufficient opportunity is given to the defendants, written statement was not filed within time. In the alternative, the learned counsel for the respondent/original plaintiff submits that heavy cost may be imposed upon the defendants.

5. The suit is instituted for partition and separate possession. I am inclined to allow the application at Exh.15 by imposing certain costs. Hence following order:

O R D E R

- i. Order dated 26.03.2015, passed below Exh.15 in RCS No. 47/2014 by the Civil Judge, Junior Division, Sillod is hereby quashed and set aside.
- ii. Application Exh.15 in RCS No. 47/2014 is hereby allowed with cost of Rs.5000/-, which is already

deposited. The respondent/original plaintiff is permitted to withdraw the same.

iii. Needless to say that the order of "No W.S." passed on 04.09.2014 by the trial Court, below Exh.1, is hereby also set aside.

iv. Writ petition is accordingly disposed of.

v. Civil Application No.1504/2016 also stand disposed of.

(V. K. JADHAV, J.)

JPC