

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

WRIT PETITION NO. 12005 OF 2015

Bhatu Sukhlal Wagh (Mali)
Age: 64 years, Occu. Business,
R/o. B-10, Arhat Building
Ram Maruti Road, Near Shivprasad Hotel,
Thane (W), Dist. Thane ... PETITIONER

Versus

- 1] Hiranman Sukhdeo Bachchav
Age: 63 years, Occu. Retired
R/o. 104-B, Vikas Apartment,
Santoshi Mata road,
Kalyan (W), Taluka-Kalyan
Dist. Thane
- 2] Sandeep Bhatulal Jaiswal,
Age: 40 years, Occu. Agri & Business,
R/o. At Post Ner,
Taluka & Dist. Dhule
- 3] Yogesh Ratilal Jaiswal
Age: 41 years, Occu. Agri & Business,
R/o. At Post Ner,
Taluka & Dist. Dhule
- 4] Shaikh Abdul Shaikh Ayyub Khatik
Age: 44 years, Occu. Agri & Business,
R/o. At Post Ner,
Taluka & dist. Dhule ... RESPONDENTS

.....
Mr. Ameya N. Sabnis, Advocate for petitioner
Mr. M. R. Sonawane, Advocate for respondent No.1
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 15th APRIL, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.
2. Petition has been moved by original defendant No.1 against refusal by the trial court to set aside no written statement order passed respectively on 20th January 2015 on Exhibit-1 and dated 9th October, 2015 on Exhibit-43 in Special Civil Suit No. 70 of 2014 instituted by respondent No.1.
3. Learned counsel for petitioner has contended that the written statement could not be filed in time as the petitioner had been suffering from various ailments and as such without letting proper opportunity to the petitioner to file written statement, orders are untenable.
4. Learned counsel appearing for respondent No.1, however, opposed the statements of petitioner, stating that the order was passed in January 2015 and yet application for setting aside the order has been moved in September-2015.
5. Learned counsel further submits that in support of the reasons given by the petitioner in his application for setting aside the order dated 20th January, 2015 at such a belated

stage, application, also no documents have been placed on record. He, therefore, requests that no indulgence be given to the petitioner.

6. Perusal of the impugned order, particularly, on application Exhibit-43 shows that it is principally for want of support to the contents in the application for setting aside no written statement order, that the order has been passed.

7. It does not appear to be a case wherein the veracity of the contentions has been seriously doubted. Learned counsel for respondent No.1, though, attempts to point out that no documents even in the writ petition have been submitted by petitioner in support of his contentions, however, is not in a position to oppose veracity of the contentions.

8. Having regard to that, it appears that the order came to be passed in January 2015 directing the matter to proceed without written statement and it is the contentions of petitioner that he had been not keeping well. The veracity of contentions has not been doubted with reference to factual position, looking at the age of the party and that they come from the distant place from the place where the subject matter of dispute is situated. The inconvenience caused to the other side

while setting aside both the orders of no written statement dated 20th January, 2015 and order dated 9th October, 2015 on Exhibit-1 and Exhibit-43 respectively can be taken care of by making payment of costs.

9. As such, the impugned orders dated 20th January, 2015 on Exhibit-1 and 9th October, 2015 on Exhibit-43 respectively, passed by 2nd Joint Civil Judge, Senior Division, Dhule in Special Civil Suit No. 70 of 2014 are set aside subject to payment of costs of Rs. 25,000/- to be deposited in the trial court to be payable to plaintiff, within a period of ten weeks from the date of receipt of writ of this order. The suit, accordingly, be proceeded with expeditiously.

10. In case of failure to deposit the costs within stipulated period, it shall be deemed that the orders impugned in the writ petition are revived and the suit shall accordingly proceed.

11. With these observations writ petition stands disposed of. Rule is made absolute in aforesaid terms.

(SUNIL P. DESHMUKH, J.)

sms