

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

BENCH AT AURANGABAD

911 WRIT PETITION NO. 233 OF 2016

SYED PASHA SYED YASIN

VERSUS

RAMDAS SARJERAO JAGDALE AND OTHERS

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Advocate for Petitioner : Mr. Tribhuwan Nitin T

Advocate for Respondent No.1: Mr. P. F. Patni

Advocate for Respondents 2 and 3 : Mr. A. D. Kasliwal

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

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

2. The petitioner is original defendant No.2 in RCS No.780/2011. Respondents/Orig. plaintiffs have instituted the said suit for recovery of possession of the property which is encroached upon by the defendants. "No W.S." order was passed against the petitioner/defendant No.2 on 15.04.2012 and on 08.03.2013, an application Exh.18 was moved for setting aside the said "No W.S." order. The application came to be allowed with cost of Rs.2000/- by order dated 18.01.2014. The petitioner original defendant No.2 has not deposited the cost and filed an application Exh. 27 on 24.03.2015 to permit him to pay the cost. The

trial court, by the impugned order dated 13.04.2015, rejected the said application. Hence this writ petition.

3. The learned counsel for the petitioner submits that the suit pertains to recovery of possession of the immovable property. The petitioner/defendant no.2 is a poor agriculturist and he was not able to make arrangement to deposit costs and therefore the delay is occurred in the matter.

4. Learned counsel for the respondents submits that the order of "No W.S." came to be passed by the trial court in the year 2012. Now, evidence of all the parties is over and the suit is posted for final hearing. In the alternative, the learned counsel submits that heavy cost may be imposed on the petitioner.

5. Since immovable property is the subject matter of the suit and if the suit is decreed, the petitioner/original defendant No.2 may loss possession of certain portion of the landed property, I am inclined to allow this writ petition by imposing certain costs. Hence, following order:

#### **O R D E R**

i. The writ petition is hereby allowed.

- ii. The order dated 13.04.2015 passed below Exh.27 in RCS No.780/2011 by the Civil Judge, Junior Division Aurangabad is hereby quashed and set aside.
- iii. Application Exh.27 in RCS No.780/2011 is hereby allowed subject to cost of Rs.10,000/- to be deposited before the trial court within a week. This cost includes original cost of Rs.2000/- imposed by the trial court. On compliance of this order, written statement of the petitioner defendant be read and recorded. Cost be paid to the plaintiff.
- iv. The trial court shall dispose of the suit expeditiously, preferably within a period of three months from the date of this order.

( V. K. JADHAV, J. )

JPC