

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

WRIT PETITION NO. 132 OF 2016

Smt. Savita Prakashchandra Modi .. Petitioner

versus

Mahendra s/o Prakashchandra Modi & ors. .. Respondents

Mr. V. P. Latange, Advocate for petitioner

Mr. D.S. Bharuka, Advocate for respondents no 2, 3A, 3C, 3E,
3F, 5, 7, 9, 11 to 13

CORAM : SUNIL P. DESHMUKH, J.

DATE : 5TH APRIL, 2016

ORDER :

1. Heard learned counsel for the parties.
2. Aggrieved by order dated 09-10-2015 passed by Second Joint Civil Judge, Senior Division, Dhule, rejecting application Exhibit-147 filed by Defendant No. 3A and 13 in Regular Civil Suit No. 253 of 2012 (old suit bearing special civil suit no. 58 of 2006) original defendant no. 3A is before this court.
3. It transpires that petitioner had been served with suit summons way back in 2010.
4. In the suit when the evidence had been adduced by the parties who were diligently attending the suit, application appears to have been moved by defendant no.3-A – present petitioner

seeking permission to file written statement. That application was rejected way back on 14-09-2015, referring to that the suit had been directed to be proceeded with *ex-parte* against the petitioner. Thereafter, after lapse of six months, present application (Exhibit-147) had been moved for setting aside *ex-parte* order.

5. It appears that, order directing to proceed *ex-parte* against original defendant no. 3 had already been passed in 2007. Thereafter, after death of defendant no.3, present petitioner was brought on record and she too was served by affixing notice on the door of her residential house referring to that she had refused to accept the same while bailiff had tried to serve summons on her. This has taken place on 14-10-2010. Thereafter, application Exhibit-146-A as stated earlier, had been moved on 14-09-2015 which was rejected on the very day and after six months, present application Exhibit-147 on 28-09-2015 was moved.

6. In the application Exhibit-147, there are no particulars given by present petitioner and defendant no. 13 and a plea is sought to be taken about petitioner being suffering from diabetes and therefore she could not attend the proceedings earlier. Such a plea does not appear to have been taken in application Exhibit – 146-A which is rejected on 14-09-2015. However, even said plea has not been supported by any material while making application Exhibit-147.

7. In the circumstances, impugned order has been passed, rejecting Exhibit-147. Apparently, on the face of it, impugned order does not appear to suffer any infirmity having regard to the conduct of the petitioner.

8. Request under the writ petition as such is not being entertained in exercise of discretionary powers by this court. However, petitioner may take up pleas, if it is so advised and if it is possible in fact and in law pursuant to section 105 of the Code of Civil Procedure, 1908.

9. Writ petition as such is not being entertained and stands rejected.

SUNIL P. DESHMUKH,
JUDGE

pnd