

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 9023 OF 2016

Shri Madhavrao Balkrishna Bachkar & ors. ... Petitioners
Vs
Kumar Pritish Rameshwar Bachkar ... Respondent.

Mr.A.B.Tajane, for Petitioners.
Mr.Sachin Gite, for the Respondent.

***CORAM : N.M.Jamdar, J.
Friday, 16 September 2016.***

Oral Order :

Rule. Rule made returnable forthwith. The learned counsel for the Respondent waives service.

2. By the impugned order dated 30 July 2015, the learned Civil Judge Junior Division, Malegaon has passed 'no written statement' order and by impugned order dated 3 November 2015, the learned Judge has rejected the application for setting aside the 'no written statement' order.

3. The suit has been filed by the Respondent-Plaintiff for partition and ancillary relief. The Petitioners appeared in the suit on 29 July 2014 and the matter was adjourned to 24 June 2015. On 30 July 2015, the learned Civil Judge passed 'no written statement' order. Thereafter the matter was posted on 7 September 2015 when application for recalling the order of 'no written statement' was made, which has been rejected on 3 November 2015.

4. Heard learned counsel for the parties.

5. Though it is a legislative policy to put the defendants under a mandate to file written statement on time, the Courts are not divested of the power to extend the period. In case where the prejudice to the Plaintiff cannot be compensated by payment of costs, the Courts may proceed to pass order of 'no written statement' and reject the application for setting aside such order. The present case is not one where it can be said that there is such a chronic default on the part of the Petitioners that the prejudice caused to the Respondent-Plaintiff cannot be off-set in terms of costs. The learned Civil Judge therefore, has proceeded to decide the application as if allowing the application or rejecting the application are the only courses of action available. In the circumstances the approach of the learned Civil Judge needs to be corrected.

6. Accordingly, the Writ Petition is allowed in terms of prayer clause (b). The Petitioners will file written statement within period of six weeks from today, subject to Petitioners paying cost of ₹ 10,000 to the Respondent within period of two weeks from today. Registry to communicate the order to the learned Civil Judge, Malegaon at the earliest, in addition by way of e-mail. It is clarified that the above order is subject to the payment of costs as directed within the stipulated period.

(N.M.Jamdar, J.)