

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

WRIT PETITION No.418 OF 2015

Sau.Padmadevi w/o Arunkumar Jaiswal

..vs..

Shri Mosam s/o Dattatray Suramwar and 2 others.

.....
 Office Notes, Office Memoranda of Coram,
 appearances, Court orders or directions
 and Registrar's orders

Court's or Judge's Order

.....
 Mr. Anand Parchure, advocate for petitioner.
 Mr. S.O.Ahmed, advocate for respondents.

CORAM : A.S. CHANDURKAR, J.

DATED : 28th JUNE, 2016.

The challenge in the present writ petition is to the order dated 11.12.2014 passed by the trial court thereby rejecting the application filed by the petitioner for permission to file her written statement. The respondents have filed suit for permanent injunction coupled with possession. In the said suit, an order dated 22.1.2013 was passed directing the suit to proceed without written statement of the defendant. Thereafter the plaintiff led his evidence by filing his affidavit. He was, however, not cross-examined. The plaintiff thereafter examined one more witness and closed his side. On 19.8.2014, the defendant moved the aforesaid application seeking permission to file written statement. In the said application it was stated that as the defendant was unwell she could not file her written statement. The trial court after noticing the conduct of the

parties held that there was no sufficient reason made out by the petitioner to allow the said application.

Shri Parchure, the learned counsel for the petitioner, submitted that as the petitioner was unwell, the written statement could not be filed earlier. He submitted that an opportunity deserves to be granted to the petitioner to contest the suit on merits.

Shri Ahmed, the leaned counsel for the respondents, supported the impugned order. According to him, the petitioner was not diligent and therefore the trial court was justified in rejecting the application below Exh. 67.

The material on record indicates that the suit was proceeded without written statement of the defendant on 22.1.2013. The plaintiff filed his evidence on record vide Exh. 42 and thereafter evidence of another witness at Exh.64. He then filed pursis at exh. 66 for closing his evidence. It is only thereafter on 19.8.2014 that the present application has been filed. The only statement made in the application is that the petitioner was unwell and hence the written statement could not be filed. Considering the fact that from 22.1.2013 till 19.8.2014, which is period of more than one and half year, the defendant has not given any details whatsoever about her illness, her vague statement in that regard cannot be accepted. Though it is submitted on

behalf of the petitioner that procedural aspect should not over-weigh the cause of justice, the facts of the present case are such that no material was brought on record to justify granting the prayer made in the application below Exh.67.

In view of aforesaid, no case is made out to interfere in writ jurisdiction. The writ petition is therefore dismissed. No costs.

JUDGE

Hirekhan

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