

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 936 OF 2016

Janardhan Babuappa Whate
Died through L.Rs.

1. Smt. Pushpabai Wd/o Janardhan Whatte,
Age 62 years, Occ. Household,
R/o Himpalner, Tq. Chakur,
District Latur.

2. Sow. Jayshree w/o Girjappa Muchate
Age 42 years, Occ. Household.
R/o Narayannagar, Tq. & Dist. Latur.

3. Dhiraj Janardhan Whatte
Age 40 years, Occ. Agri & Service
R/o Himpalner, Tq. Chakur,
District Latur.

4. Shivraj Janardhan Whatte
Age 8 years, Occ. Agril.,
R/o as above.

5. Sow. Chhaya Shivanand Gandge
Age 36 years, Occ. Household,
R/o Alwai, Tq. Bhalki, Dist. Bidar
(Karnataka State).

..Petitioners

Versus

Dhanraj Omkarappa Kore,
Age 35 years, Occ. Money Lending
Agril. and Advocate, R/o Himpalner,
Tq. Chakur, Dist. Latur.

..Respondent

...

Advocate for Petitioners : Shri Ashtekar R.K.
Advocate for Respondent : Shri Kedar Balbhim R.

...

CORAM : RAVINDRA V. GHUGE, J.

Dated: December 13, 2017

...

ORAL JUDGMENT :-

1. Rule.
2. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
3. I have considered the strenuous submissions of the learned Advocates for the petitioners / plaintiffs and respondent / sole defendant.
4. Issue is as regards recalling of the 'No Written Statement' order and permitting the defendant to file his Written Statement. Suit property is a residential house and the suit has been filed seeking specific performance of the contract.
5. Following dates and events are undisputed:-
 - (a) The defendant was served with summons on 20.3.2015 and he appeared on 26.3.2015.
 - (b) The defendant is an LL.B. graduate.
 - (c) 'No Written Statement' order is passed on 25.6.2015.

(d) Pursuant to the above, the plaintiffs recorded their oral evidence.

(e) The defendant filed application Exhibit 40 on 14.10.2015 for seeking recalling of the 'No WS' order.

(f) Exhibit 40 was allowed by the impugned order dated 9.12.2015.

6. The strenuous submission of the petitioners is that Exhibit 40 is a vague application, which is bereft of proper reasons. The trial Court could not have accepted the contention set out in Exhibit 40 in a casual manner. When no reasons are cited, the Written Statement cannot be permitted to be filed belatedly.

7. Learned counsel for the defendant has submitted that it was for the reasons set out in Exhibit 40 that he could not file his Written Statement. He was unwell and was searching for important documents so as to prepare his Written Statement. Costs of Rs.1,500/- have been imposed on the defendant while passing the impugned order and the Written Statement has already been filed.

8. It is obvious from the proceedings concerning a house property, that the defendant is the only person contesting the suit. If the Written Statement is not filed, the defendant would be rendered

defenseless and an irreparable harm, serious prejudice and manifest inconvenience would be caused since he might lose the said property.

9. As the delay appears to be of about four months from the date of the 'No WS' order, it cannot be said to be inordinate so as to refuse leave to file the Written Statement. Since the defendant is an LL.B. graduate, the above lapse on his part should have prompted the trial Court to enhance the costs. Learned counsel for the petitioner submits, in the alternative, that if costs are granted, the said amount be donated to the Advocate Association's Bar Library of Bombay High Court, Bench at Aurangabad.

10. Considering the above, this petition is partly allowed only to the extent of enhancing the costs. The petitioner shall deposit an amount of Rs.1,000/- with the Advocate Association's Bar Library of Bombay High Court, Bench at Aurangabad on/or before 20.1.2018.

11. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)

...

akl/d