

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1767 OF 2017
(Jabirkhan Haji Shabbir Khan and others Vs. Ganpat Natthu Patil
and other)

Mr.A.G.Talhar, Advocate for the petitioners.
Mr.P.V.Balkhande, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 10/08/2017

PER COURT :

1. The petitioner is aggrieved by the 'No W.S.' order dated 14/08/2002 and the rejection of application Exh.233 by the impugned order dated 04/01/2017 thereby refusing to permit the petitioners to file their written statement, is sustained.

2. I have considered the strenuous submissions of the learned Advocates for the petitioner and the learned Advocate for respondent No.1 / plaintiff.

3. The undisputed factors are as under :-

[a] The petitioners received summons in the suit on 19/01/2001.

[b] An Advocate was appointed and Vakalatnama was entered.

[c] 'No W.S.' order was passed by the Trial Court on

14/08/2002 in the Reg.Civil Suit No.83/1996.

[d] Application Exhibit 233 seeking recalling of 'No W.S.' order was filed on 08/08/2016.

[e] The petitioners got the knowledge about the suit on 16/04/2016 when they read a notice in the newspaper with reference to another defendant.

[f] The recording of evidence in the suit has concluded and the evidence of these petitioners was also closed long ago.

4. After considering the submissions and upon perusing the record available, it appears that these petitioners had earlier engaged Advocate Jamil Shaikh. Thereafter they have changed the Advocate. Vakalatnama was filed on 19/01/2001 and time to file W.S. was sought. Several applications were filed on the pretext that necessary information is being collected by these petitioners for the preparation of the written statement. Finally after waiting for almost 18 months, the Trial Court passed an order of 'No W.S.'.

5. Order 8 Rule 1 and the proviso thereunder would clearly indicate that the time to file written statement can be enlarged only if the applicant indicates circumstances beyond his control. If the reasons assigned would convince that the defendants were precluded from filing their W.S., the time could be enlarged in the interest of justice.

6. Reverting to this case, it appears that the petitioners have merrily levelled allegations against their Advocate claiming that he did not take effective steps for 15 years. Such an allegation is apparently for self serving purposes. This indicates that even the petitioners were in deep slumber and by putting forth a bald allegation that the Advocate was to inform them when to file a written statement, the petitioners pray that the filing of the W.S. be permitted after 14 years.

7. I find the conduct of the petitioners to be quite unethical. They have attempted to tide away the situation on making allegations against the lawyer. The proviso to Rule 1 under Order 8 would be reduced to a mockery if such contentions are accepted.

8. Considering the above, this petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)