

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2426 OF 2017

SUNIL EKNATH GHUGARKAR

VERSUS

SMT. CHANDRAKALABAI BHIKA BHAND AND OTHERS

Advocate for Petitioner : Shri R.R. Karpe.
Advocate for Respondent No. 1 : Shri V.R. Autade.

CORAM : RAVINDRA V. GHUGE, J.

Dated : 18th August, 2017

PER COURT :

1. The petitioner is aggrieved by the order dated 21/11/2016, by which, applications Exhibit 65 and 66 have been rejected and the petitioner is prevented from filing his written statement in R.C.S. No. 168/2012.

2. I have considered submissions of the learned advocates for the respective sides.

3. The petitioner was a newly added defendant No. 3. He received summons on 27/01/2016. 'No written statement' order was passed on 29/04/2016. He moved applications Exhibit 65 ad 66 on 14/07/2016, praying for condonation of delay and leave to file the written statement. By the impugned order dated 21/11/2016, The Trial Court has rejected both the applications on the ground that the time frame provided for under Order VIII Rule 1 of the Code of Civil Procedure cannot be extended.

4. Learned advocate for respondent No. 1 has prayed for the dismissal of this petition with costs. In the alternative, he submits that heavy costs be imposed upon the petitioner, considering that he has delayed the matter and the original plaintiff is an 85 years old lady.

5. It appears from the record that the petitioner was negligent and failed in filing the written statement within time. Even after the 'No written statement' order was passed, he has consumed about two months and then moved applications 65

and 66. Nevertheless, it cannot be ignored that if the petitioner is precluded from filing his written statement, he would practically be defenseless. The medical certificate of the mother of the petitioner was also placed on record indicating that she was taking treatment at Ahmednagar from 05/03/2016 to 28/07/2016, as she was suffering from Rheumatic Arthritis and Viral Hepatitis.

6. I find that the delay caused by the petitioner cannot be termed as being inordinate. By imposing reasonable costs, the hardships suffered by the plaintiff could be reduced. However, if the petitioner is unable to file his written statement, he would practically be defenseless in a suit for partition and separate possession of the agricultural land.

7. Considering the above, this petition is allowed. The impugned order dated 21/11/2016 is quashed and set aside. Applications Exhibit 65 and 66 are allowed on the condition that the petitioner shall deposit costs of Rs. 5,000/- before the Trial Court within a period of four weeks from today. The

original plaintiff/Smt. Chandrakalabai shall withdraw the said amount without conditions.

(RAVINDRA V. GHUGE, J.)

S.P.C.