

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 922 OF 2016

Pandurang Sadashiv Javade and Others ..PETITIONERS

VERSUS

Laxman Ambaji Chivre ..RESPONDENT

**WITH
CIVIL APPLICATION NO. 6977 OF 2017
IN
WRIT PETITION NO. 922 OF 2016**

Laxman Ambaji Chivre ..APPLICANTS

VERSUS

Pandurang Sadashiv Javade and Others ..RESPONDENT

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Mr. R.D. Biradar, Advocate for petitioners and respondents in CA/6977/17.

Mr. M.L. Dharashive, Advocate for respondent in WP/922/16 and applicants.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 16th JUNE, 2017**

ORDER :

1. By the consent of the learned Counsel for the respective sides, this civil application is disposed of and the writ petition is taken up for hearing.

2. I have heard the submissions of Mr. Biradar and Mr. Dharashive, learned Counsel for the respective sides.

3. This Court by order dated 25th January, 2016 had observed as under:

“1. Leaned counsel submits that petitioners/original defendants filed an application for setting aside the “NO WS” order and the learned Judge of the Trial Court has rejected the same.

2. In view of this, issue notice to respondent/original plaintiff sole, returnable on 22.2.2016.

3. The petitioners/original defendants shall deposit Rs.5,000/(Rs. Five Thousand) before the Trial Court within a period of two weeks from today.

4. Till the next date of hearing, further proceedings in RCS No.5/2012, are hereby stayed.”

4. Having considered the submissions of the learned Counsel and having gone through the record available, it is apparent that the petitioners, who are original defendants, have been negligent and have failed to file their written statement within the prescribed time. The application at Exhibit 22 filed before the Trial Court praying for vacating the “No WS” order was rejected on the ground that the application is delayed and the reasons assigned are not satisfactory. The petitioners contended in Exhibit 22 that due to the agricultural activities, they could not contact their advocate and pass necessary instructions for filing the written statement. It is further submitted that this Court can impose cost on the petitioners and permit them to file their written statement within two weeks. They also contended that they would not seek any adjournment.

5. Mr. Dharashive, learned Counsel for the respondent strenuously defended the impugned order and submitted that leave to file written statement beyond limitation should not be granted only on the ground of sympathy. The defendants must suffer for their act of negligence and laxity.

6. I find that the hardships faced by the plaintiff can be softened if costs are imposed and the defendants are permitted to file their written statement within a short duration. It is in the interest of justice that the proceeding should be conducted on their own merits. If the defendants are not permitted to file their written statement, they would practically be unable to contest the suit.

7. Considering the above, this petition is partly allowed. The impugned order dated 09th April, 2015 is quashed and set aside. The application at Exhibit 22 is allowed subject to total cost of Rs.10,000/- (Rupees Ten Thousand Only). Rs.5,000/- have already been deposited by the petitioners before the Trial Court. Consequentially they would further deposit an amount of Rs.5,000/- before the Trial Court in R.C.S. No. 5 of 2012 within two weeks and shall also file their written statement within two weeks. No extension of time would be granted.

8. The plaintiff is at liberty to withdraw the entire costs alongwith accrued interest thereon, without any condition.

(RAVINDRA V. GHUGE, J.)

SSD