

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8699 OF 2014

01 Sahebrao s/o Dnayndeo Jaware,
age: 46 years, Occ: Agril.;

02 Babasaheb s/o Dnyandeo Jaware,
age: 54 years, Occ: Agril.;

Both R/o Wambori, Tq. Rahuri,
District Ahmednagar.

Petitioners

Versus

Genu s/o Namdeo More,
since deceased, through
L.Rs.:

1A Hari s/o Genu More,
age: 61 years, Occ: Agri.,;

1B Narayan s/o Genu More,
age: 59 years, Occ: Agri.;

1C Rukhamini Genu More,
age: 94 years, Occ: Household,

All R/o Wambhori, Tq. Rahuri,
District Ahmednagar.

1D Sau. Shashikala Annasaheb
Gagre, age: 66 years,
Occ: Household, R/o Momin
Akhada, Tq. Rahuri,
District Ahmednagar.

1E Shakuntala Pandharinath Shete,
age: 63 years, Occ: Household,
R/o Rahuri (Kh.), Godumbe
Akhada, Tq. Rahuri, District
Ahmednagar.

Respondents

Mr.R.R.Karpe, advocate for petitioners
Mr.J.R.Patil, advocate holding for Mr.G.B.Rajale, advocate for
REspondents No.1A to 1E.

CORAM : S.B.SHUKRE, J.

DATE : 18th January, 2017

ORAL JUDGMENT:

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 I have perused the application (Exhibit-18) filed by the petitioners seeking leave of the Court for extension of time to file proposed written statement and counter claim. It is seen from the impugned order that the learned Joint Civil Judge, Junior Division, Rahuri, has rightly considered the issue of inordinate delay occurred in filing the written statement as well as counter claim. There has been no proper explanation given by the petitioners.

3 Absence of proper explanation is borne out from the record and learned Counsel for petitioners also graciously accepts this fact. But, he submits that there is something more in the issue than what meets the eye. He submits that the aspect of causing irreparable loss to the petitioners, who are having good case on merits, has not been considered at all by the learned Civil Judge. He points out from the proposed written statement as well as counter claim that all the facts, that are going to be placed on record, are in the nature of defence of petitioners. He submits that in absence of these facts, the controversy involved in the suit,

could not be determined in an effective manner.

4 This has not been agreed to by the learned Counsel for respondents. But, on going through the defence taken in the proposed written statement and counter claim, I find that there is merit in the said submission of the learned Counsel for petitioners. The issue of measurement of disputed property lies at the heart of the controversy involved in the suit and it is the contention of petitioners that the measurement itself is unauthorised and illegal inasmuch as, it was carried out in their absence. In the plaint, it is, however, stated that petitioners were present in person at the time of measurement. If this material fact goes uncontested and later on it emerges that the petitioners were not present at the time of measurement and the measurement was vitiated in law, it would result in complications and multiplicity of proceedings.

5 There is another issue involved in the matter which relates to the question, as to why relief now being claimed by the respondents in the present suit was not sought by them in previous suit being R.C.S. No.265 of 2004, when according to their own case, it was clear that 4 acres of land was encroached upon by the petitioners as per the measurement conducted by the Court Commissioner. This would also give rise to another question, as to whether now such a relief can be claimed; and whether the suit itself is maintainable in law or not.

6 The above discussion, so far made, would show that the decision of present suit, which is based upon what has happened in the previous suit, on merits of the case, would be

desirable rather than its decision based upon no contest by the defendants. In pursuance of the provisions of Rule 8 Order I, ultimately this issue needs a proper and effective decision between the parties, which would, as far as possible, finally decide the controversy and in my opinion, such purpose would be served in the facts and circumstances of this case, if petitioners are allowed to file their written statement along with counter claim. These facts and circumstances of the case, in my view, justify granting of the application. As regards the delay caused in this case, suffice it to say that in civil matters, when complicated questions of facts are involved, parties are required to be rendered effective assistance by the legal experts. But, in some cases, the parties are not so fortunate to have with them such assistance. But, does this mean that the party should be penalised for something not in his hands and the answer would be a clear no to it. This is what has happened in the present case and, therefore in these facts and circumstances, according to me, though delay has occurred in the instant matter, it needs to be condoned conditionally. Of course, lot of inconvenience has been caused to the respondents, which, however, could be compensated by imposing appropriate costs.

7 In the result, writ petition deserves to be allowed and is allowed accordingly. The impugned order dated 26.03.2014, passed by learned Civil Judge, Junior Division, Rahuri, below the application (Exhibit-18) in Regular Civil Suit No.313/2008, is quashed and set aside. The proposed written statement and counter claim is permitted to be filed within two weeks from the date of the order, subject to the condition that petitioners shall pay cost of Rs.15,000/- (Rs. Fifteen thousand) to the respondents

within ten days from today.

8 Rule is made absolute in above terms.

S.B.SHUKRE
JUDGE

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