

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

WRIT PETITION NO. 6369 OF 2016

Kadubai Nivrutti Bankar
Age: 62 years, Occu.: Agriculturist,
R/o Bhokar, Tq. Shrirampur,
Dist. Ahmednagar.

..PETITIONER

VERSUS

Sau. Sumanbai Shivnath Sadhey
Age: 45 years, Occu.: Agriculturist,
Through her Power of Attorney
Shivnath Baburao Sadhey
Age: 50 years, Occu.: Agriculturist,
R/o Dighi, Post: Yesgaon, Tq. Ganagpur,
Dist. Aurangabad.

..RESPONDENT

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Mr. R.B. Temak, Advocate for petitioner.
Mr. Saeed S. Shaikh, Advocate h/f Mr. S.K. Shaikh, Advocate for respondent.

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

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 02nd March, 2016 passed by the Trial Court by which the application for setting aside the “No W.S.” order dated 27th October, 2015, has been rejected.

3. I have considered the strenuous submissions of the learned Counsel for the respective sides.

4. Notice in Regular Civil Suit No. 138 of 2015 was issued on 22nd May, 2015. It was served on the petitioner/defendant on 11th July, 2015. She appeared in the proceeding on 10th August, 2015. “No W.S.” order was passed on 27th October, 2015.

5. The petitioner filed an application on 13th January, 2016 at Exhibit 14 praying for setting aside the “No W.S.” order and the same came to be rejected by the impugned order on 02nd March, 2016.

6. It is obvious that the petitioner has been casual while dealing with the proceedings. Though she is an aged lady, she had appeared through her son. It is stated in Exhibit 14 that she was old, unwell and was not in a position to promptly give instructions to her advocate to file a written statement. “No W.S.” order has been passed within 77 days from the date of her appearance in the Court.

7. The learned Counsel for the respondent has strenuously prayed for the dismissal of this petition. In the alternative, he prayed for costs.

8. Considering the above, the comparative hardships and taking into account the fact that the suit would proceed without a challenge if the petitioner is restrained from filing their written statement, that this petition is partly allowed. The impugned order dated 02nd March, 2016 is quashed and set aside. The application at Exhibit 14 is allowed on the condition that the petitioner shall deposit an amount of Rs.5,000/- alongwith her written statement before the Trial Court on or before 15th July, 2017, failing which this order shall stand recalled and the impugned order dated 02nd March, 2016 shall stand restored.

9. The respondent would be at liberty to withdraw the amount of cost deposited, without any condition. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

SSD