

UNREPORTED

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

BENCH AT AURANGABAD.

WRIT PETITION NO.7934 OF 2017.

- 1) Patloba S/o Madhavrao Munde,
Age 55 years, Occ.Agriculture,
- 2) Sau. Sumanbai W/o Patloba Munde,
Age 50 years, Occ.Household,
- 3) Dhanraj S/o Patloba Munde,
Age 31 years, Occ.Advocate. ... Petitioners.

Versus

- 1) Pranav S/o Suryabhan Wange,
Age 20 years, Occ.Education,
 - 2) Suryabhan S/o Ningaram Wange,
Age 53 years, Occ.Agril.,
 - 3) Sumitrabai W/o Suryabhan Wange,
Age 45 years, Occ.Agril. &
Household,
 - 4) Sudarshan S/o Suryabhan Wange,
Age 30 years, Occ.Agril.
- All R/o Shirshi (B) Tq.Sonpeth,
Dist.Parbhani.
- 5) Sau. Sarika W/o Sachin Malwad,
Age 28 years, Occ.Household,
R/o Vikasshil Society, Flat No.503,
A-wing, In front of Astavinayak

Shopee, Kasarwadi, Pune,
Tq. and Dist.Pune.

6) Namrata d/o Suryabhan Wange,
Age 25 years, Occ.Education,
R/o Shirshi (B), Tq. Sonpeth,
Dist.Parbhani. ... Respondents.

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Mr.R.L.Ade, advocate holding for Mr.A.A.Nimbalkar,
advocate for the petitioners.
Mr.M.P.Kale, advocate for respondents.

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CORAM : SUNIL P. DESHMUKH,J.

Date : 21-07-2017.

ORAL JUDGMENT

1. Mr.Kale, learned counsel submits that he has instructions to appear on behalf of all the respondents and would submit his power accordingly.

2. Rule. Rule returnable forthwith. With the consent of learned counsel for parties, heard finally.

3. After hearing learned counsel for the parties, it surfaces that Respondent No.1 has instituted RCS No.55

of 2016 for partition and possession against defendants including present petitioners who are defendants No.6 to 8 in the same. While suit summons were received at the end of petitioners, the same had been without requisite documents. The petitioners had put in their appearance on 3.2.2017, whereupon it had been realised that it would be necessary to have proper copies of plaint and documents filed along with the same in order to enable the petitioners to file written statement in the suit. A request at the behest of petitioners to the plaintiffs had not been heeded. Under the circumstances, an application Exh.26 dated 5.4.2017 had been moved by the petitioners seeking directions to plaintiff to supply copy of plaint along with documents. The request had been opposed by the plaintiffs and application Exh.26 came to be rejected on 5.6.2017 and on the very day, '*suit to proceed without written statement of defendants No.6 to 8*' came to be passed on Exh.I.

4. Perusal of impugned order shows that learned judge has considered that documents are usually supplied to defendants along with suit summons and it appears from report by the bailiff the plaint and documents have

been served and has further considered that there is no rebuttal evidence or material brought on record by the concerned defendants. The learned judge further appears to have been swayed by the date of service, date of appearance and the date of application and considered the same is procrastination of proceedings.

5. Learned counsel for the petitioners submits that report of bailiff may be as referred to but it does not appear that proper and complete copies had been served and received at the end of defendants No.6 to 8. Upon appearance it had been realised that there had been discrepancy in the memo of plaint supplied to the petitioners and the one on record and also that there are quite a few documents filed along with the plaint. While petitioners' request for supply of copies of requisite documents had not been responded, they had no alternative but to make an application under Exh.26. The learned counsel further adverts to that there had been some correction sought by the plaintiff in the plaint on the date of making application Exh.26 demonstrating that there had been discrepancy in the documents supplied. He further submits that for want of proper documents and

especially proper plaint and other documents, there had been a handicap to file proper written statement. He submits that in any case a technical approach should be eschewed in the matter. Defendants' interest is likely to be in peril without written statement.

6. He further refers to that defendant Nos.1 to 5 are the parents, children and brothers of plaintiff, whereas present petitioners are from outside their family and it is their property at stake in the matter.

7. He as such requests to take a proper view in the matter and grant the writ petition.

8. Learned counsel for the Respondents, however, finds it difficult to accede to the request being made on behalf of the petitioners. The learned judge has rightly considered, along with the suit summons, the plaint and the documents are supposed to be served. He submits that learned Judge has observed that suit summons were served along with the plaint and documents. The report of bailiff depicts the same. He submits that petitioners are trying to delay the

proceedings and are adopting delaying tactics.

9. Application Exh.26 has been moved seeking copies of plaint and documents, as referred to in order to enable the petitioners to file proper written statement, a handicap which has been expressed by the defendants for filing written statement. If at all there had already been a supply and request is being made for additional copies, in such a case, proper way would have been to supply by taking costs for such supply. In such matters pedantic approach generally is expected to be eschewed. The Court it appears has further went on to direct the suit to proceed without written statement of the present petitioners.

10. In the scenario it appears to be expedient that to have contest on merits and for the same let the petitioners be supplied with copies of documents sought under Exh.26 on payment of costs and let them file written statement which they shall lodge after obtaining copies within a period of four weeks.

11. In the circumstances, the impugned order

dated 5-6-2017 passed below Exh.1 in RCS No.55 of 2016 directing the suit to proceed without written statement and the other on Exh.26 are quashed and set aside. Application Exh.26 stands allowed subject to payment of cost of Rs.1,000/- (Rupees one thousand). Cost to be deposited within a period of four weeks from the date of receipt of this order. On receipt of documents, written statement be filed within four weeks thereafter.

12. Rule made absolute in aforesaid terms.

Sd/-

(SUNIL P. DESHMUKH,J.)

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