

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8362 of 2017
(Virendra s/o Nagnath Patil and another Vs. Laxmibai Kishanrao
Patil and others)

Ms.S.V.Salunke h/f Mr.V.D.Salunke, Advocate for the petitioners.
Mrs.Pathan Tahiwar Khan Wajeed Khan, Advocate for the
respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 10/10/2017

PER COURT :

1. The petitioners are aggrieved by the 'No W.S.' order dated 30/08/2016 by which the petitioners / original defendant Nos. 8 and 9 are precluded from filing their written statement in SCS No.14/2015. The petitioners are also aggrieved by the order dated 14/03/2017 by which the Trial Court has rejected application Exh.91 filed on the same date praying for the recalling of the 'No W.S.' order.

2. I have considered the submissions of the learned Advocate for the petitioners and respondent No.1 / original plaintiff. Respondent Nos. 2 to 12, who are original defendants, have not chosen to appear in this matter.

3. The issue involved in the suit is as regards ancestral property

which comprises of agricultural land and other commercial properties.

4. It is trite law that when it comes to condonation of delay, the Trial Court would consider whether the delay is deliberate, inordinate and aimed at giving undue advantage to the person seeking condonation. The Hon'ble Apex court has dealt with such issues in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649].

5. The petitioners have received summons on 02/05/2016. 'No W.S.' order was passed on 30/08/2016. Application Exh.91 was filed on 14/03/2017 and was rejected on the same date.

6. It cannot be ignored that on the one hand, the delay caused is neither deliberate nor inordinate and on the other hand, the petitioners would be rendered defenceless if their written statement is not on record. At the same time, the hardships suffered by the plaintiffs on account of the delay being caused has to be compensated.

7. Considering the above, this petition is partly allowed. The impugned orders dated 30/08/2016 and 14/03/2017 are quashed and set aside. The written statement placed on record by the petitioners shall be accepted on the condition that both the petitioners shall deposit an amount of Rs.5,000/- each before the Trial Court on or before 10/11/2017 as costs to the plaintiffs. After depositing the costs, the plaintiff Laxmibai shall withdraw the entire amount without conditions. If the petitioners fail to deposit the costs on 10/11/2017, both the impugned orders shall stand restored on 10/11/2017.

(Ravindra V.Ghuge, J.)