

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

WRIT PETITION NO. 8751 OF 2016

1. Sonabai Sukram Bhil .. Petitioners
Age. 67 years, Occ. Agri.,
Through, Devidas Sonu Bhil
R/o. At Post Nandane,
Tq. & Dist. Dhule.
2. Renabhai Kalsingh Bhil
Age. 64 years, Occ. Agri.,
R/o. Tamthare, Tq. Sindkheda,
Dist. Dhule.

Versus

1. Dilip Dattatray Mahale .. Respondents
Age. 55 years, Occ. Agri. & Business
2. Saw. Arati Dilip Mahale
Age. 49 years, Occ. Agri. & Business

Both R/o. Mahavir Society, Malegaon
Road, Dhule, Tal. & Dist. Dhule.
3. Pralhad Naval Bhil
Age. 38 years, Occ. Agri.,
R/o. Nyahalod, Tq. & Dist. Dhule.

Mr.S.B. Bhosale h/f. Mr. S.P. Brahme, Advocate for the petitioners.

Mr.K.C. Sant, Advocate for respondent Nos. 1 & 2.

CORAM : S.B. SHUKRE,J.

DATED : 17.02.2017

ORAL JUDGMENT :-

1. Heard learned Counsel for the petitioners and learned Counsel for respondent Nos.1 and 2. The order dated 1st February, 2016, rejecting the application of the petitioners/original defendant Nos.1 and 2 praying therein to set aside "No W.S." order and granting them to file their written statement, is challenged in this petition. It is the contention of the learned Counsel for the petitioners that there is reason why the petitioners could not file written statement and appear before the Court on various dates. The reason is attributed to their old age, ailment and ignorance. He points out that these factors operate in this case and it has also been admitted by respondent Nos.1 and 2/original plaintiffs that the petitioners are old, aged and ailing persons and living in poverty. Therefore, he submits that some indulgence should be shown to the petitioners, so that decision on merits of the case could be rendered by the trial Court.

2. Mr. Sant, learned Counsel for respondent Nos. 1 and 2 submits that these petitioners about one year after executing agreement to sell with respondent Nos.1 and 2, sold the property to respondent No.3 and this act on their part would falsify their claim that they are innocent and poor persons. He submits that on the

contrary the defendants are very smart persons and they know how to get maximum advantage out of justice administration system by placing on record misleading facts. He further submits that it was intention of the petitioners to protract the trial and harass the respondents and then appeal to the conscious of the Court by relying upon the alleged factors of poverty and ignorance.

3. Upon consideration of the entire factual scenario, this Court finds substance in the arguments of learned Counsel for respondent Nos.1 and 2. The petitioners on one hand claim that they are poor persons and on the other hand, with disregard for ethics, go ahead in agreeing to sell the property second time. So far as selling of the property second time is concerned, there is no dispute about it. The petitioners, however, dispute about their agreeing to sell the property to respondent Nos.1 and 2 and contend that they had only affixed their signatures upon some blank documents. If this is their case, they could have certainly come forward, filed their written statement and submitted with all zeal at their command before the Trial Court that what respondent Nos.1 and 2 are claiming was false. This was not done by them and they maintained complete silence for a period of three years and now they want to turn

back the clock on the ground that they are ignorant, poor and old aged persons, not knowing much about intricacies of law. The conduct of the petitioners exposes them. As submitted by learned Counsel for respondent Nos.1 and 2, these petitioners are well acquainted with the niceties of law and they would like to take advantage of the same so as to extract maximum benefit out of it. In this view of the matter, I do not find any merit in this petition.

4. Learned Counsel for the petitioners has relied upon judgment of the Supreme Court in the case of **Sambhaji & Ors. Vs. Gangabai & Ors., 2008 AIR (SC) 767** holding that the provisions of Order VIII Rule 1 of C.P.C. stipulating period of 90 days for filing of written statement is directory and not mandatory. There is no dispute about this principal of law but even then, when discretion to allow filing of written statement after expiry of stipulated period is to be exercised, sufficient cause is required to be shown by the defendant. In the instant case, no such cause has been shown. Therefore, in this case the learned Civil Judge rightly rejected the application. Even in the case of **Gayathri Vs. M.Girish, AIR 1026 SC 3559**, it is held that where the defendant is seen to have acted in a way to cause insult to justice, the Court cannot come to the rescue of such defendant.

5. In the result, the writ petition is dismissed.
No costs.

[S.B. SHUKRE, J.]