

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9769 OF 2017

SARITA PRAKASH KULKARNI AND OTHERS
VERSUS
YESHAWANT DEVRAO BHAGWAT AND OTHERS

Advocate for Petitioners : Shri P.R. Nangare.
Advocate for Respondents : Shri Mehul Navandar.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 08th August, 2017

PER COURT :

1. The petitioners are aggrieved by the order dated 07/04/2017, by which, the Trial Court has rejected application Exhibit 58. The petitioners are also aggrieved by the order dated 17/01/2014, passed below Exhibit 57.

2. The petitioners are original defendant Nos. 4 and 5 in R.C.S. No. 101/2012. 'No written statement' order was passed on 11/06/2012. Application Exhibit 49 seeking leave to file written statement and recalling 'No written statement' order was allowed on 23/10/2013, subject to costs of Rs. 1,000/- per defendant. Despite extension of time from 23/10/2013 till

16/01/2017, the costs were not deposited. Request for extension of time was rejected on 17/01/2014. The request for recalling the refusal of extension of time was also rejected in April, 2017.

3. Learned counsel for the original plaintiffs strenuously submits that the petitioners are intentionally delaying the matter. He submits that plaintiff Nos. 1 and 2 who are respondent Nos. 1 and 2 in this petition, are the contesting parties. Respondent Nos. 3 to 6 are defendant Nos. 6 to 9 and they have no say in this matter.

4. Shri Navandar, learned advocate for plaintiffs strenuously contends that though, the Trial Court granted numerous opportunities to the petitioners and enhanced the costs of Rs. 1,000/- to Rs. 5,000/- each, the petitioners failed to deposit the costs for a period from October, 2013 till April, 2017. He, therefore, prays that this petition be dismissed with costs. In the alternative, he prays that costs of Rs. 50,000/- per petitioner be imposed.

5. After considering the submissions of the learned advocates and on perusing the sequence of events, it is apparent that the petitioners have shown negligence and laxity in this matter. Though, several opportunities were granted, they have failed to pay the costs. Consequently, the written statement could not be filed and the suit is at the stage of cross-examination of the plaintiffs.

6. Notwithstanding the above, it cannot be lost sight of the fact that if a party is denied the opportunity of filing a written statement in a suit for injunction and removal of encroachment, it would render grave hardships, as the suit pertains to agricultural land.

7. In my view, in order to meet the ends of justice and to compensate the plaintiffs for the hardships caused, I find that costs of Rs. 10,000/- could be imposed upon the petitioners.

8. Considering the above, this petition is allowed. The impugned orders dated 07/04/2017 and 17/01/2014 are

quashed and set aside. The 'No written statement' order dated 11/06/2012, is set aside, on the condition that the petitioners shall deposit the total amount of Rs.10,000/- before the Trial Court on/or before 31/08/2017. Pursuant to which the written statement filed, would be taken on record. A request for extension of time by the petitioners would not be entertained by the Trial Court. If, the petitioners fail to deposit the total amount of Rs. 10,000/- as directed above, the Trial Court shall proceed to decide the suit and the impugned orders which are set aside, shall stand restored. All the plaintiffs shall withdraw the cost in equal proportion without conditions.

9. It is pointed out that the written statement which is already placed on record by the petitioners is prior to the amendment to the plaint on 17/12/2015. Consequently, the earlier written statement may be ignored and the petitioners shall file a composite written statement to the amended plaint on/or before 31/08/2017 and no adjournment shall be granted under any pretext.

(RAVINDRA V. GHUGE, J.)