

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7100 of 2013

Dayanand S/o Gyandeo Kadam,

age: 36 years, occu: Agri

R/o Moharga, Tq. Ausa,

Dist. Latur

Petitioner

Versus

1 Kishor S/o Ramprasadji Mundada,

Age: 44 years, occu: Agri,

R/o Moti Nagar, Latur

2 Anil S/o Bhimshankarappa Utge

Age: 45 years, occu: Agri

R/o Karanje Gali, Ausa

Tq.Ausa, Dist. Latur

3 Jeevan S/o Limbraj Chavan

Age: 29 years, occu: Agri

R/o Ekambiwadi, Tq.Ausa

Dist. Latur

Respondents

Mr. S.S. Halkude advocate for the petitioner

Mr. Sachin Deshmukh advocate for Respondent Nos.1 and 2

CORAM : **R. M. BORDE, JUDGE**

(Date: 4th September, 2017)

ORAL JUDGMENT

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final disposal at admission stage.

3 The petition is presented by original defendant No.1, taking exception to the order passed by the Trial Court below Exhibit 53/B, rejecting the application tendered by the petitioner - original defendant, for setting aside the order of 'No WS' recorded on 21.2.2011 and directing acceptance of the written statement presented along with the Application,.

4 The respondent - original plaintiff presented a Suit, claiming decree of perpetual injunction in respect of land Gat No.19, admeasuring 17 R to the extent of 11 R southern side. The suit was presented in the year 2010 and summons came to be served on the defendants in the year 2011. Since the defendants could not present written statement within the time stipulated under the Code of Civil procedure, the trial Court proceeded to pass an order of 'No WS' on 21.2.2011. The petitioner - original defendant approached the Court with a request to set aside the order of 'No WS'. It is contended in the application that, as a result of family problems faced by the defendant, he could not look after the litigation diligently and could not file the Written Statement. The defendant tendered Written Statement along with the application and requested the

Court to accept the same. However, the Trial Court, noticing that the reason put forth by the defendant No.1 is not convincing, proceeded to reject the same.

5 I have perused the order, impugned in the petition. It must be taken note that the suit presented by the plaintiff relates to immovable property. It does not appear that the defendant is willfully or with a view to secure disadvantage, is trying to protract the litigation. The defendant is not likely to gain in any manner in delaying the hearing of the suit. However, he is likely to suffer, if he is not permitted to place his defence on record. According to me, an opportunity needs to be extended to the defendant to put forth his defence before the Court so that the controversy arising in the matter can be resolved on its own merit. The inconvenience accounted to the plaintiff can be compensated by directing to make payment of costs.

6 In the circumstances, the Writ Petition is allowed.

7 The order, impugned in the instant petition, passed by the Civil Judge, Junior Division, Latur on 13.8.2013, is quashed and set aside and the Application tendered by the petitioner – original defendant No.1 at Exhibit 53/B shall be deemed to have been allowed, However, subject to payment of costs of Rs.5,000/- to

the original plaintiff. The amount of costs shall be paid within a period of three weeks from today.

8 Rule is accordingly made absolute.

(R. M. BORDE, JUDGE)

vbd