

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

WRIT PETITION NO.9482 OF 2016

RAWAN VALJINATH KADAM AND OTHERS  
VERSUS  
ROHIDAS VALJINATH KADAM AND OTHERS

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Advocate for Petitioners : Shri Wakure Sanjay A.  
Advocate for Respondent 1 : Shri D.A.Mane h/f Shri Milind Patil.

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**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 05<sup>th</sup> January, 2017**

Per Court:

1           The Petitioners are the original Defendant Nos.2, 4 and 5, who are aggrieved by the order dated 29.04.2016 passed by the learned Trial Court by which their application Exhibit-56 praying for setting aside “no W.S. Order” in R.C.S. No.229/2011 has been rejected.

2           I have considered the strenuous submissions of the learned Advocate for the Petitioners and the learned Advocate appearing on behalf of Respondent No.1./ original Plaintiff. Respondent Nos.2 and 3 are formal parties, is the statement made by the Petitioners. Though they have been served, no appearance is entered.

3           Respondent No.1 is the original Plaintiff, who has preferred R.C.S. No.229/2011 seeking partition and possession of the suit property which is said to be an ancestral agricultural land. Respondent Nos.2 and 3 herein are the original Defendant Nos.1 and 3, who have filed their Written Statement within time and are participating in the proceedings.

4           The notice in the suit was served on these Petitioners on 19.08.2011. For 11 months, the Written Statement was not filed. “No W.S.” order was passed by the Trial Court on 16.07.2012 against Defendant Nos.2 and 4 and similar order was passed on 25.07.2013 against Defendant No.5. After passage of almost four years, common application Exhibit-56 is filed on 09.02.2016 seeking recalling of the “No W.S.” order. The trial in the suit has already commenced. “No cross” order has already been passed against one of these Petitioners.

5           Despite strenuous submissions of the learned Advocate for the Petitioners, I am unable to accept that the Petitioners were precluded by the circumstances from filing the Written Statement. They continued in deep slumber despite “no cross” order was also passed.

6           It is brought to my notice by the learned Advocate for Respondent No.1 that these Petitioners are in possession of the ancestral

suit property. They are indulging in agricultural activities and they are also harvesting crops and this is the real reason for delaying the suit so that they could continue in possession and continue to harvest crops causing prejudice to the Plaintiff.

7           I find that the proviso to Order 8 Rule 1 of the Code of Civil Procedure was introduced by the Code of Civil Procedure (Amendment) Act, 2002 by which the Written Statement has to be filed within 30 days from the date of service of summons. The proviso indicates that the Defendant, who fails to file the Written Statement within the said period, can be allowed to file the same on such other date as may be specified by the Court and for reasons to be recorded in writing, provided that the said period would not be later than 90 days from the date of service of summons.

8           As such, after the summons were served on these Petitioners on 19.08.2011, they were expected to file their Written Statement prior to the end of December, 2011. The application for seeking leave to file the Written Statement is filed on 09.02.2016 which is after four years and one month. There can be no dispute that strong and acceptable reasons for permitting the filing of the Written Statement, in such circumstances, will have to be put forth.

9           I have perused the application Exhibit-56 dated 09.02.2016 which is in Marathi. Not a single reason has been assigned in the said application which runs into seven lines and contains two sentences. There is no explanation as to why these Defendants have not filed their Written Statement within limitation or even after a short span thereafter. In the absence of any reason at all being put forth, the Trial Court was justified in rejecting the said application.

10           The learned Advocate for the Petitioners submits that if nominal costs are imposed, the Petitioners would pay the same. He suggested Rs.5,000/- as a total amount to be paid by these Petitioners.

11           Considering the effect of the amended Order 8 Rule 1 of the Code of Civil Procedure and taking into account that there is no whisper of explanation in the application Exhibit-56, which would have enabled the Trial Court or even this Court to permit these Petitioners to file their Written Statement, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.