

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4474 OF 2014

1. Sanjay Dyanoba Chaudhary
2. Ganesh Vitthal Kinge
3. Nitin Kashinath Kedari

All above,

Age : Major, Occupation : Contractor .. Petitioners /
R/o Bhusawal-Jamner Road, Original
Anandnagar, Bhusawal, Plaintiff
Taluka Bhisawal, District : Jalgaon

versus

Sanjay Shivajirao Shankpal
Age : 52 years, Occupation: Service,
R/o : Chandrama Apartment,
Ramanandnagar, .. Respondent /
Girna Pumping House Road, Orig. Defendant
Jalgaon

Mr. Yogesh H. Jadhav, Advocate h/f Mr. Sanket S. Kulkarni, Advocate
for petitioners

CORAM : SUNIL P. DESHMUKH, J.
DATE : 19-12-2017

ORAL JUDGMENT:

1. None for respondent.
2. Heard learned counsel for the petitioners - original plaintiffs in special civil suit no. 210 of 2012. He vehemently submits that there are no plausible reasons given by the 6th Joint Civil Judge, Senior Division, Jalgaon while passing order dated 27-09-2013

whereunder applications of the defendant at Exhibits 21 and 23 for setting aside order of no written statement passed on 08-03-2013 and condonation of delay have been allowed permitting him to file written statement and as such, according to learned counsel, the order is erroneous.

3. Further, learned counsel fairly points out that after written statement had been allowed to be filed, issues had been framed and the matter is pending for evidence.

4. Although learned counsel has vehemently submitted as aforesaid, it appears, the trial court has taken into account that the suit had been filed for specific performance of agreement in respect of immovable property and that the application for recall / setting aside of no written statement order sufficiently makes out a case for condonation of delay in making the same and allowing to file written statement.

5. It has been referred to that defendant had not been aware of the order and procedure for rectification and had not been made aware of the same and his rights to immovable property are at stake. It has been considered by the trial court that delay appears to have been caused under genuine circumstances and for reasons as referred to in the application and the delay had not been deliberate.

6. Having regard to that the discretion has been exercised in favour of defendant letting him to file written statement to have the contest on merits, in the present matter it appears it would be proper to have the matter contested and decided on merits which in longer run would be in the interest of the plaintiffs. It may have to be noted that there had been no interim relief operating in the matter since 2014.

7. In the circumstances, writ petition is not entertained and is dismissed.

SUNIL P. DESHMUKH
JUDGE

pnd/