

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

Writ Petition No. 05386 of 2015

District : Osmanabad

Watchala Vithhalrao Khaladkar,
Age : Adult,
Occupation : Household,
R/o. Osmanabad,
Taluka & District Osmanabad.

.. Petitioner
(Original defendant
no.04)

versus

1. Sarubai Gangadhar Mairan (Died).
2. Basveshwar Gangadhar Mairan,
Age : 59 years,
Occupation : Agriculture / Business,
R/o. Darga Road, Osmanabad,
Taluka & District Osmanabad.
3. Vaijanath Sham Gangadhar Mairan,
Age : 48 years,
Occupation : Business,
R/o. Darga Road, Osmanabad,
Taluka & District Osmanabad.
4. Mahadev Miling Gangadhar Mairan,
Age : 38 years,
Occupation : Business / Agriculture,
R/o. Darga Road, Osmanabad,
Taluka & District Osmanabad.
5. Amar Gangadhar Mairan,
Age : 35 years,
Occupation : Business / Agriculture,
R/o. Darga Road, Osmanabad,
Taluka & District Osmanabad.
6. Gopal Gangadhar Mairan,
Age : 35 years,
Occupation : Business / Agriculture,
R/o. Darga Road, Osmanabad,
Taluka & District Osmanabad.

7. Mallinath Gangadhar Mairan,
Age : 54 years,
Occupation : Nil,
R/o. Osmanabad,
Taluka & District Osmanabad,
Now residing at Subhash Nagar,
Ring Road, Barshi,
Taluka Barshi,
District Solapur.
 8. Ramling Dhondiba Karajkhede,
Age : 60 years,
Occupation : Agriculture &
Business,
R/o. Ganesh Nagar, Osmanabad,
Taluka & District Osmanabad.
 9. Rajendra Murlidhar Kirkase,
Age : 48 years,
Occupation : Business,
R/o. Acharya Galli, Osmanabad,
Taluka & District Osmanabad.
 10. Ghansham Narayan Takekar,
Age : Adult,
Occupation : Agriculture,
R/o. Ganesh Nagar, Osmanabad,
Taluka & District Osmanabad.
 11. Savita Dadasaheb Kaldete,
Age : Adult,
Occupation : Household,
R/o. Ganesh Nagar, Osmanabad,
Taluka & District Osmanabad.
- .. Respondents
(Nos.01 to 06 -
Original plaintiffs
&
Nos.07 to 11 -
Original defendants)

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*Mr. Balaji S. Shinde, Advocate, holding for
Mr. Anandsingh S. Bayas, Advocate, for the petitioner.*

Respondent no.01 died.

*Respondents no.02, 03, 07, 08, 09, 10 and 11
served (Absent).*

*Mr. N.S. Tanwade, Advocate, for respondents
no.04 to 06.*

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 25TH JULY 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. Heard learned counsel appearing for parties by consent finally.

02. The petitioner is before this court aggrieved by order dated 25-09-2014 on exhibit 76 in regular civil suit no. 92 of 2012. Exhibit 76 had been moved to set aside 'no written statement' order. The application had been moved belatedly after about three years. It had been explained that the petitioner is an old and retired lady having no issue. Further, defendants no.01 and 03 had assured that no loss would be suffered by her. However, subsequently it was realized that the matter is amongst family members and her defence in the same would be necessary. It had further been mentioned that she was suffering from ailments like diabetes and high blood pressure. The trial court considered that the application has been moved belatedly when evidence of the plaintiff is almost over and plaintiff had examined as many as four witnesses and this is an attempt to prolong the matter.

03. Mr. B.S. Shinde, learned counsel appearing for the petitioner, submits that in the interest of justice and to have the

contest on merit, it would be expedient that the application is allowed subject to payment of costs. It is not a case wherein no reasons had been given for not approaching earlier. He has placed reliance on order dated 18th November, 2015 passed by Hon'ble learned single judge of this court in a writ petition no. 10309 of 2014 among the same parties whereunder this court had set aside the 'no written statement' order subject to payment of costs. According to learned counsel for the petitioner, similar treatment be given to the present petitioner. He further submits that a sum of Rs. 7,500/- has been deposited in the trial court pursuant to the order passed by this court in this writ petition.

04. Learned counsel appearing for respondents no.04 to 06 purports to oppose the request. However, he is not in a position to dispute the veracity of the reasons given under which delay has been caused and further has not been able to overcome the order in writ petition with any justifiable reason worth consideration.

05. In the circumstances, having regard to that as observed in the order in earlier writ petition, plaintiffs had not objected to filing of written statement, similar is the case in the present petition. Therefore, it would be expedient to allow the writ petition subject to payment of costs.

06. As such, the writ petition is allowed in terms of prayer clauses "B" and "C", subject to payment of costs of Rs. 12,500/-. As such, the petitioner is supposed to deposit further sum of Rs. 5,000/- in the trial court making aggregate sum of Rs. 12,500/- together. Said sum of Rs. 12,500/- be appropriated towards costs as ordered under this order. Respondents - plaintiffs would be entitled to withdraw the said amount from the trial court. It is expected that the costs as well as written statement be submitted within a period of four weeks from the date of receipt of this order by the trial court. The trial court shall proceed with the suit and decide the same on merits as expeditiously as possible.

07. Rule made absolute in the above terms.

(Sunil P. Deshmukh)
JUDGE

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