

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

WRIT PETITION NO. 13163 OF 2017

POPAT ABA CHOBHE AND OTHER
VERSUS
JANABAI THAKARAM CHOBHE AN OTHERS

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Advocate for Petitioners : Mr Kulkarni Sanket S.
Advocate for Respondents : Mr Barde Parag Vijay

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CORAM : V.K. JADHAV, J.
Dated: December 15, 2017

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PER COURT :-

1. Learned counsel for the petitioners/original defendant submits that, the trial court has passed 'No W.S.' order and even though, the petitioners have filed an application for setting aside 'No W.S.' order at Exh.18, trial court has rejected said application on the ground that, delay in filing the application for setting aside no WS order is not explained.

2. Learned counsel appearing for respondents/original plaintiff submits that, petitioners have not submitted Written Statement in time nor explained delay in filing the application for setting aside

'No WS' order. Trial court has therefore rightly rejected the application Exh.18.

3. It appears that, suit has been instituted for partition and separate possession in respect of the ancestral property. Petitioner is one of the coparcener and as such his written statement is necessary to adjudicate the dispute.

4. In view of the above submissions, since the suit is instituted for partition and separate possession, petitioners/defendants shall be permitted to file their written statement on record, however, the petitioners are not diligent in filing written statement in time and, even did not bother to explain the delay in filing the application for setting aside 'No WS' order, petitioner is required to be saddled with certain costs. Hence, following order.

O R D E R

1. Writ Petition is hereby allowed.

2. The impugned order passed below Exh.18 in R.C.S No.612/2006 is hereby quashed and set aside.
3. Application Exh.18 is hereby allowed in terms of its prayer clauses subject to costs of Rs.5,000/-(Rs. Five Thousand) to be paid to the other side within FOUR WEEKS from today.
4. Consequently, application Exh.19 submitted by the other defendants adopting Written Statement filed by the petitioners/defendants is also allowed in terms of its prayer clauses.
5. Writ Petition accordingly disposed of.

(V.K. JADHAV, J.)

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