

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

WRIT PETITION NO.12189 OF 2016

- 1) Sitaram s/o Sopan Pawar,
Age 68 years, Occu. Agriculture &
Legal Practice, R/o Village Deola,
Tq. Ambajogai, District Beed.
- 2) Vijaymala w/o Sitaram Pawar,
Age 60 years, Occu. Agriculture
R/o Village Deola,
Tq. Ambajogai, District Beed. ... PETITIONERS

VERSUS

- 1) Shaikh Daud s/o Shaikh Yakhub
Age 75 years, Occu. Agriculture
R/o Village Deola,
Tq. Ambajogai, District Beed.
- 2) Shaikh Ibrahim s/o Shaikh Daud,
Age 85 years, Occu. Agriculture
R/o Village Deola,
Tq. Ambajogai, District Beed.
- 3) Shaikh Ismail s/o Shaikh Daud,
Age 40 years, Occu. Agriculture
R/o Village Deola,
Tq. Ambajogai, District Beed. ... RESPONDENTS

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Shri R.D. Raut, Advocate for petitioners
Mrs. M.A. Kulkarni, Advocate for respondents
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CORAM: S. B. SHUKRE, J.

DATED: 27th February, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. It is seen from the impugned order that it is not in dispute that the petitioner No.1 has lost his hearing faculty in a car accident. It is also seen that, the original plaintiff opposed the application mainly on the ground that delay on day-to-day basis was not explained. In fact, in such cases, what is required is disclosure of sufficient cause, which can be ascertained from the contentions of both sides viewed in a broader perspective and it is not necessary that minute details contributing to delay should be explained to the Court.

3. Considering the situation in which the petitioners are finding themselves in, and also their respective ages, I am of the view that some explanation has indeed been given by them, which resulted in occurrence of delay ranging from 9 months to 2 months in filing the written statement. So, this is a case wherein there is some explanation given for the delay and something wanting on the part of petitioners, which has caused inconvenience to the original plaintiff, but the inconvenience can always be taken care of by imposing costs, lest, justice would suffer.

4. In this view of the matter, I find that the impugned order is not consistent with the settled principles of law and it deserves to be quashed and set aside.

5. Accordingly, Writ Petition is allowed. The impugned order dated 13/9/2016 is hereby quashed and set aside. The delay occurred in filing the written statement is condoned subject to payment of costs of Rs.10,000/- by the petitioners to the respondents. The amount of Rs.10,000/- has already been deposited by the petitioners in the trial Court and, therefore, the respondents are granted liberty to withdraw the same forthwith. The written statement shall be positively filed on or before the next date. The written statement, it is submitted, has already been filed before the trial Court. It shall be taken on record and considered on merits.

6. Rule is made absolute in above terms.

(S. B. SHUKRE)
JUDGE

fmp/