

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12415 OF 2016

BHUMA S/O. JALBA MUNDKAR AND OTHERS
VERSUS
KALIMUNISABEGUM W/O. JALIL KHAN AND OTHERS

Advocate for Petitioners : Shri M.D. Godhamgaonkar.
Advocate for Respondent No. 3 to 5 : Shri R.R. Shaikh.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 07th July, 2017

PER COURT :

1. The petitioners are aggrieved by the order dated 31/08/2016, by which, application Exhibit 55, dated 27/04/2016, praying for recalling of the “No written statement” order dated 20/03/2013, has been rejected.

2. I have heard the learned advocates for the respective sides.

3. There is no dispute that the suit was instituted in the year 2012 and despite several opportunities, the petitioners / defendant Nos. 6 to 9 and 11 to 14 failed to file their written

statement. The “No written statement” order was passed on 20/03/2013 and the suit proceeded without their written statement. It is not disputed that the recording of evidence in the said suit has still not commenced. Exhibit 55 was filed on 27/04/2016, which is after 3 years and one month from the date of the “No written statement” order.

4. The Trial Court has rejected Exhibit 55 on the ground that the delay in filing the written statement cannot be condoned. The respondents / plaintiffs have raised an objection that the petitioners have deliberately refrained from filing their written statement only to delay the matter and cause undue harassment to the plaintiffs. If the “No written statement” order is vacated, the suit will be reverted by 3 years causing grave prejudice and manifest inconvenience to the plaintiffs. In the alternative, the plaintiffs have prayed for costs at the rate of Rs. 5,000/- (Rupees Five Thousand only) per plaintiff for each year of delay.

5. On 22/12/2016, this Court has issued notices and

directed the concerned defendants to deposit Rs. 5,000/- (Rupees Five Thousand only) in this Court. Same has been deposited. The suit was, however, stayed.

6. It cannot be ignored that the amendments to the Code of Civil Procedure are with the intention and object of ensuring that the trial in the suits and proceedings are not delayed. However, at the same time, it needs to be noted that if a written statement is not on record and when the suit is with regard to immovable agricultural land, those defendants who had not filed the written statement are likely to suffer and would be exposed to a loss of property or share. The hardships caused to the plaintiffs can be reduced by imposing costs on the defendants.

7. Considering the above and in order to ensure that the concerned defendants are not rendered defenceless, I am of the view that they could be permitted to file a written statement within a specified period and by imposing costs.

8. As such, this petition is partly allowed. The impugned

order dated 31/08/2016, is quashed and set aside and Exhibit 55 is allowed. The eight defendants shall deposit an amount of Rs. 15,000/- (Rupees Fifteen Thousand only) before the Trial Court, in addition to the Rs. 5,000/- (Rupees Five Thousand only) deposited in this Court, collectively on / or before 29/07/2017, failing which, this order shall stand recalled and the order dated 31/08/2016 shall stand restored leading to the dismissal of this petition. They shall also file their written statement, if not already placed on record, on / or before 29/07/2017. No extension of time would be sought either for filing the written statement or for depositing the costs.

9. The amount of Rs. 5,000/- (Rupees Five Thousand only) deposited in this Court, shall stand remitted along with accrued interest to the Civil Judge (Junior Division), Umri, District Nanded, forthwith. The plaintiffs shall withdraw both the amounts without conditions, in equal proportions.

(RAVINDRA V. GHUGE, J.)