

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12357 of 2016
(Balaji Bappaji Lad Vs. Dr.Y.Lakshmi Sarayu d/o Y.R.Sharma and
others)

Mr.Sharad S.Shinde, Advocate for the petitioner.
Mr.D.A.Madake, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 23/06/2017

PER COURT :

1. By the consent of the petitioner and respondent No.1 and on recording the statement that respondent Nos. 2 and 3 are not concerned with the No W.S. order passed against the petitioner, this petition has been taken up for hearing.

2. The petitioner is the original defendant No.1 in Spl.C.S.No.22/2014. The petitioner had appeared before the Trial Court on 29/04/2016. No written statement order was passed on 28/07/2016. An application Exh.31 praying for vacating 'no written statement' order was filed on 19/11/2016 and on the same day, the Trial Court has rejected Exh.31 by the impugned order.

3. This Court, by order dated 15/12/2016, directed the petitioner

to deposit Rs.25,000/- before the Trial Court as a condition for staying the proceedings. Both the learned Advocates submit that the petitioner has deposited the said amount.

4. I have considered the submissions of the learned Advocates. Mr.Madke submits that this petition be dismissed with heavy costs since the petitioner is deliberately delaying the trial as he is occupying the suit house admeasuring 334 Sq.Mtrs. The suit has been filed for possession and compensation.

5. There is no dispute that defendant No.1 could not be served by the suit summons issued by the Court. No order as like 'proceed ex-parte' was passed by the Trial Court. The petitioner appeared in the suit on 29/04/2016 and after 3 months, no written statement order was passed. Negligence or laxity on the part of the petitioner is visible from the record.

6. However, the issue in the suit is as regards directing the petitioner to vacate the house and the plaintiff seeking possession of the said house. In this backdrop, if the suit proceeds without the written statement of the petitioner, he would suffer an irreparable harm, grave prejudice and manifest inconvenience. In my view, the

Trial Court should have allowed the petitioner to file his written statement by imposing costs so that the hardships and inconvenience suffered by the plaintiff would have been reduced.

7. Considering the above and in order to ensure that the ends of justice are met, this petition is partly allowed. The impugned order dated 19/11/2016 is quashed and set aside and Exh.31 is partly allowed. the Trial Court shall accept the written statement filed by the petitioner alongwith Exh.31 and take it on record. Respondent No.1, who is the original plaintiff, shall withdraw Rs.15,000/- from the amount deposited by the petitioner before the Trial Court, without conditions as costs. The remaining amount alongwith interest that may have accrued, would be withdrawn by the petitioner.

(Ravindra V.Ghuge, J.)