

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12573 OF 2016

Chandrakant Rajaram Kharote,
Age-55 years, Occu-Labour,
R/o Belapur (Bk.), Tq.Shrirampur,
Dist.Ahmednagar.

-- PETITIONER

Versus

1. Smt.Parvatabai Dattatraya Khoje,
Age-78 years, Occu-Household,
2. Pandharinath Dattatraya Khoje,
Age-48 years, Occu-Labour,
Respondent Nos.1 and 2 R/o Lokmanya
Nagar, Pada No.4, Sai Sanket
Apartment, Room No.404,
Thene (W), Dist.Thane,
3. Mangal Arvind Lakare,
Age-60 years, Occu-Household,
R/o Lakare Galli, House No.588,
Bhingar, Tq. And Dist.Ahmednagar,
4. Lata Ashok Parkhe,
Age-58 years, Occu-Household,
R/o Parkhewadi, P.K.Road,
Mulund (W) – 400080 (Mumbai)
5. Yamuna Sudhakar Bangal,
Age-45 years, Occu-Household,
R/o Gandhakuti Apartment,
Jawalkar, Nagar, Sy.No.85/2,
Parjatak Colony, A.Pimpale Gurav,
Pune 411 061.
6. Somnath Dattatraya Khoje,
Age-52 years, Occu-Labour,
Resp.No.1, 2 and 6 R/o Lokmanya
Nagar, Pada No.4, Sai Sanket

Apartment, Room No.404,
Thane (W), Dist.Thane,
(Resp.No.6 is G.P.A. Holder of
Respondent Nos. 1 to 5)

– RESPONDENTS

Mr.D.R.Adhav, Advocate for the petitioner.
Mr.K.N.Lokhande, Advocate for respondent Nos.1 to 6.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/08/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the order dated 18/11/2016 by which the application praying for permission to file a written statement has been rejected. The Trial Court thereafter has passed ‘No W.S.order” on 18/11/2016.
3. Learned Advocate for the respondents strenuously opposes this petition and prays for dismissal with heavy costs. Learned Advocate for the petitioner prays for reducing the costs of Rs.5,000/- which he has deposited before the Trial Court under the orders of this court dated 21/12/2016.

4. It is obvious that the petitioner / original defendant had appeared in the suit on 11/04/2016 and was required to file his written statement within a period of 90 days. Since he was unable to file the written statement within the said period, he moved an application Exhibit 11 on 05/08/2016 before the “No W.S. order” was passed and narrated the reason of the illness of his son, for being unable to file the W.S. The Trial Court has rejected the application on the ground that the mandate of Order 8 Rule 1 of the CPC does not permit filing of W.S. beyond 90 days.

5. In catena of judgments delivered by the Hon’ble Apex Court, the filing of the written statement is permitted even beyond 90 days provided malafides, laches and oblique motives are not attributable to the conduct of the defendant. In the instant case, I do not find any contention of the plaintiff that the petitioner / defendant has intentionally avoided filing his W.S. In fact he had attempted to file the W.S. 3 months before the “No. W.S. Order” was passed.

6. Considering the above, this petition is allowed. The impugned order dated 18/11/2016 rejecting Exh.11 as well as the “No W.S. order” dated 18/11/2016, are quashed and set aside. Application Exh.11 stands allowed. The W.S. tendered alongwith Exh.11 shall be

taken on record by the Trial Court and shall be exhibited.

7. The costs of Rs.5,000/- deposited by the petitioner before the Trial Court shall be withdrawn by the original 6 plaintiffs alongwith accrued interest in equal shares, without conditions

(Ravindra V.Ghuge, J.)