

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6838 OF 2017

MANOHAR SHANKAR PATIL
VERSUS
AJIT KESHAVRAO PATIL AND OTHERS

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Advocate for Petitioner : Shri Jadhavar S.G.
h/f Shri Momale U.L.
Advocate for Respondent 1 : Shri Barde P.V.
Advocate for Respondent 2 : Shri Kale N.G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 11, 2017

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PER COURT :-

1. By this petition, the petitioner prays for quashing the impugned order dated 7.2.2015, passed by the trial Court, rejecting application Exhibit 32 and confirming the order dated 28.11.2012, by which, RCS No.185 of 2006 was dismissed as against defendant Nos.1 and 2.

2. The original defendant Nos.1 and 2 have appeared in this matter. Respondent No.3, though served has not entered an appearance.

3. I have considered the submissions of the learned Advocates for the respective sides. Shri Barde, on behalf of

defendant No.1 submits that he had already appeared before the trial Court and has filed his Written Statement. Shri Kale submits, on behalf of original defendant No.2 that he will cause his appearance before the trial Court, within the period as may be granted by this Court. He would independently move the trial Court for seeking leave to file a Written Statement. Both the learned Advocates for defendant Nos.1 and 2 submit that unless the impugned order is set aside, the suit would not be restored as against these defendants.

4. The petitioner is an agriculturist. RCS No. 185 of 2006 has been preferred by him for seeking recovery of possession of a plot No.32 in Yeshwant Housing Society admeasuring 50x60 feet. His suit would suffer an irreparable damage if the order of dismissal as against defendant Nos.1 and 2 is sustained. He would practically be remediless and defenseless.

5. I do not find that the petitioner would gain any undue advantage by neglecting the matter resulting in it's dismissal as against two defendants. The rigors of litigation suffered by defendant Nos.1 and 2 can be softened by imposing costs. Both the learned Advocate for defendants submits that if this Court is inclined to entertain this petition and impose costs, the same

should be paid to the High Court Legal Services Authority, Sub-Committee Aurangabad.

6. This petition is, therefore, partly allowed. The impugned order dated 7.2.2015 is quashed and set aside and application Exhibit 32 is allowed. RCS No.185 of 2006 shall, therefore, stand restored as against defendant Nos.1 and 2, subject to payment of costs by the petitioner for an amount of Rs.5,000/- which the petitioner shall deposit with the High Court Legal Services Authority, Sub-Committee Aurangabad on/or before 10.11.2017, failing which, the impugned order dated 7.2.2015 shall stand restored. If the costs is deposited, the petitioner shall produce the receipt evidencing the deposit, before the trial Court on/or before 21.11.2017, failing which the trial Court shall presume that the costs has not been deposited and the suit shall stand dismissed as against defendant Nos.1 and 2.

(RAVINDRA V. GHUGE, J.)

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