

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 495 OF 2017

Gorakh Eknath Pawar & Ors. ...	Petitioners
Vs.	
Motiram Sitaram Pawar & Ors. ...	Respondents

Mr.Tushar N. Sonawane, for the petitioners
Mr.Girish R. Agrawal, for the respondent No.1.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 9th October, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioners herein happen to be the original defendants in R.C.S. No.106 of 2014. On 7.7.2014, the petitioners had received a notice and the notice contemplated that written statement ought to be filed within 10 days from the date of receipt of summons. The petitioners had filed Vakalatnama on 16.7.2014. However, by an order dated 28.1.2015, an order of no W.S. was passed. Hence, the petitioners had filed an application on 23.6.2016 requesting the Court to set aside the order of “no W.S”. There was delay of 1 year 8 months and 18 days in filing the application challenging the order of “No WS.”

3. The learned Civil Judge, Senior Division, Niphad, by an order dated 24.10.2016, has rejected the said application on the ground that the defendants had not shown sufficient cause for not filing the written statement within the stipulated time and also there is delay in filing the application praying for setting aside the said order.

4. The learned counsel for the petitioners submits that due to lack of communication with the Advocate, the W.S. could not be filed within the stipulated time. It is also submitted that grave prejudice would be caused to the defence of the defendants

5. The learned counsel appearing for the respondents has vehemently opposed the grant of application and submitted that by passage of time, affidavit of evidence of the plaintiffs has already been filed and hence it would not be appropriate to accept the written statement after framing of the issues.

6. Taking into consideration the fact that the courts cannot take a pedantic approach, the order dated 24.10.2016 deserves to be set aside upon imposing costs of Rs.2,000/- upon the petitioners. The costs to be paid along with the application and the written statement. In the eventuality that the application seeking setting aside of the order dated 24.10.2016 is filed along with the written statement on or before 16.11.2017, the learned Court

shall take the same on record and consider the merits of the matter on the basis of the written statement as well. The order dated 24.10.2016 is quashed and set aside. Rule is made absolute. Petition stands disposed of.

[SMT. SADHANA S.JADHAV, J.]