

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4962 OF 2014

Ramsaran Bahor Shah	...	Petitioner
Vs.		
Ravindra Ramsaran Shah & Anr.	...	Respondents

Mr.Rakesh K. Singh i/b. RKS Associate, for the petitioner.
Mr.Ashutosh Kaushik i/b. Kaushik & Co.for the respondent No.1.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 4th October, 2017.

P.C.

Rule. Rule returnable forthwith with consent of the parties.

2. The petitioner herein happens to be the original defendant No.1. Respondent No.1 happens to be the plaintiff in RCS No.1903 of 2012 which is pending before the Civil Judge, Junior Division at Thane.

3. It appears from the records that defendant No.1 has filed the present suit for possession and injunction. However, in the suit, the plaintiff has also prayed for a relief seeking declaration that the power of attorney and the agreement dated 7.4.2008 be declared as null and void. It appears that the defendant had not filed written statement within the stipulated time and had protracted the proceeding without filing written statement. The trial Court was constrained to pass an order of “No W.S.” on 13.3.2013. The

present petitioner had filed an application in August 2013 requesting the Court to set aside the order of No W.S. The written statement was also filed along with the application. The petitioner/defendant had also filed a reply to the application filed by the plaintiff under Order XXXIX Rules 1 and 2. The learned trial Court had considered the delay in defending the suit on the part of the present petitioner and, therefore, the application seeking the relief of taking the written statement on record was rejected by an order dated 13.11.2013. The learned trial Court rightly observed that no cogent reasons were assigned for the delay in filing the written statement and, therefore, had refused to consider the delay.

4. Taking into consideration the relations between the parties that the plaintiff happens to be the son of the present petitioner, this Court is inclined to condone the delay in filing the written statement in the interest of justice and, therefore, the Civil Judge, Junior Division, Thane, shall take the written statement on record and also decide the application below Exhibit 5 after taking into consideration the contentions raised by the defendant.

5. The learned counsel for the respondent No.1 submits that he has no specific instructions as to whether the application below Exhibit 5 is pending or is decided. In the eventuality it is not decided, the learned Civil

Judge shall take into consideration the contentions raised by the petitioner i.e. original defendant No.1. Hence, the following order :-

ORDER

(i) The order dated 13.11.2013 passed by the learned Joint Civil Judge, Junior Division, Thane below Exhibit 19 is hereby quashed and set aside.

(ii) The petitioner is at liberty to file fresh written statement. The said W.S. be filed on or before 10.11.2017. The learned Civil Judge, Junior Division, Thane, shall take the written statement on record and frame issues accordingly. Upon failure to submit the written statement on or before 10.11.2017, the learned Civil Judge, J.D. shall proceed with the suit as undefended and frame issues. The learned Judge shall decide the suit on or before 30.7.2018.

(iii) The petitioner shall pay costs of Rs.5,000/- along with the written statement.

Rule is made absolute in the above terms. The Petition stands disposed of.

[SMT. SADHANA S.JADHAV, J.]