IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1254 OF 2016

Shri Baban Narayan Tamhane ..Petitioner.

Vs

Narayan Shankar Tamhane and Ors. .. Respondents

Mr. Dormaan Dalal, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 01/02/2017

PC:

1. Heard Mr. Dormaan Dalal, learned counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant no.13', has challenged the Judgment and order dated 30/12/2015 passed by the learned Jt. Civil Judge, Jr. Dn, Daund, below Exhibit-124 in Regular Civil Suit No. 94 of 2012. By that order, the learned trial Judge rejected the application made by defendant no.13 for setting aside No W.S. order dated 4.11.2009 thereby taking Written Statement of defendant no.13 on record. Mr. Dalal submitted that defendant no.13 was served with suit summons on 8.8.2009. He filed Vakalatnama of Advocate S.S. Shaikh on 10.8.2009. On 4.11.2009, No W.S. order was passed against defendant no.13 and other defendants. He has taken me through paragraphs 3 and 4 of the application Exhibit-124 to

contend that though defendant no.13 gave necessary instructions to his previous advocate for drafting written statement, the same was not drafted by his previous Advocate. Defendant no.13, therefore, changed the Advocate. His new Advocate, upon going through the record, came to know that no W.S. order was passed against defendant no.13 on 4.11.2009. Accordingly, the present application was taken out on 9.7.2015 for setting aside No W.S. order and for taking Written Statement on record. He submitted that defendant no.13 is an agriculturist and is ignorant of the court proceedings as also legal provisions. He submitted that the suit is for partition and separate possession. The plaintiffs have not opposed the application. He, therefore, submitted that no prejudice would be caused to the plaintiffs in case application Exhibit-124 is allowed and Written Statement of defendant no.13 is taken on record.

3. I have considered the submissions of Mr.Dalal. I have also perused the material on record. It is not in dispute that defendant no.13 was served with suit summons on 8.8.2009. He also engaged Advocate who filed appearance on 10.8.2009. No W.S. order was passed on 4.11.2009. Perusal of the application Exhibit-124 shows that it was filed on 9.7.2015. However, there is no prayer for condoning delay in taking out the application for setting aside No W.S. order. That apart, the learned trial Judge rejected the application mainly on the ground that in the entire

application, defendant no.13 did not disclose what efforts he made for ensuring that the written statement is filed on record.

4. In view thereof as also for the reasons recorded in paragraph 3 of the impugned order, I do not find fault with the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

5. Apart from that, defendant no.13 would be at liberty to file fresh application giving all the necessary details for setting aside No W.S. order dated 4.11.2009 and for taking Written Statement on record after condoning the delay. Grant of this liberty shall not be construed as an expression of merits either way. All contentions of other side are expressly kept open. If defendant no.13 gives requisite details and makes out a sufficient cause for condonation of delay, the learned trial Judge will decide the said application uninfluenced by the observations made in the impugned order. If, however, defendant no.13 does not give requisite details as also does not make out a sufficient cause, the learned trial Judge will bear in mind the impugned order as also the order passed by this Court. Order accordingly.

(R.G.KETKAR, J.)