

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE JURISDICTION  
WRIT PETITION NO. 3786 OF 2017

Shri. Vilas Ganpat Bhoir  
(Since decd). Through LRS.

.....Petitioner

V/s.

Shri. Anant Shripat Ambre and Ors.

....Respondents

Ms. Anusha P. Amin Advocate for Petitioner.

Ms. Neeta Karnik Advocate for respondent nos. 2, 4 & 5.

**CORAM : Mrs. MRIDULA BHATKAR, J.**

**DATED : JULY 26, 2017.**

**PC :**

Not on board. Upon urgent mentioning, taken on board.

1) Rule. Rule made returnable forthwith. By consent, petition is heard finally and decided at the stage of admission.

2) This petition is directed against the order dated 22/06/2016 passed by 13<sup>th</sup> Jt. Civil Judge Senior Division, Thane rejecting the prayer of setting aside

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'No W.S.' passed below Exhibit 61 in Regular Civil Suit No. 482 of 2005. The suit is filed in the year 2005 against three defendants. Thereafter, summons were served on defendants on 03/09/2005. Thereafter, defendants remained absent throughout, so first 'No W.S.' order was passed on 06/01/2011 against defendant no. 1/3. Thereafter, 'No W.S.' order was passed against defendant nos. 1/1 and 1/2 on 03/09/2012 and then 'No W.S.' order passed against defendant nos. 2 & 3 on 06/02/2013. Petitioners/original defendants thereafter filed application on 08/11/2014 for setting aside 'No W.S.' order which was rejected. Hence, this petition.

3) The learned counsel for the petitioner submits that the petitioner could not attend the court and there was no communication between the petitioner and the advocate and therefore, 'No W.S.' order was passed. She has further submitted that application under section 9 (A) of the Code of Civil Procedure, 1908 challenging the jurisdiction was filed by the defendants and as that application was filed, no written statement was filed.

4) The learned counsel for the respondent/original plaintiffs nos. 2, 4 & 5

submitted that application under section 9 (A) of the CPC was filed on 30/11/2013 i.e. after 'No W.S.' orders were passed by the trial court. It is further submitted that the reason given by the defendant in the application is false. The learned counsel supported the order passed by the trial court, rejecting the application for setting aside 'No W.S.' order.

5) Perused order passed below Exhibit 71 by the learned trial Judge. Perused record, so also application dated 08/11/2014 for setting aside 'No W.S.' order. No sufficient reasons is given by the defendants in the application as to why written statement was not filed nearly for a period of 9 years. The ground for not filing of the written statement due to pendency of 9 (A) application is also incorrect as the said application was admittedly filed after 'No W.S.' orders were passed. The order passed by the learned trial court is well reasoned, no illegality is found. Hence, not disturbed.

6) Rule is discharged.

**(MRIDULA BHATKAR, J.)**