

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6707 OF 2014

Shri Suresh Mahadeo Bhagwat
and ors

..Petitioners.

Vs

Shri Anil Ramchandra Rakshe

.. Respondent

Mr.Deepak M.Gupte, Advocate for Petitioners.

**CORAM : R.G.KETKAR,J.
DATE : 03/03/2017**

PC:

1. Not on board. At the request of Mr. Gupte, taken up for admission. Heard Mr. Deepak Gupte, learned counsel for the petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged the Judgment and order dated 20.1.2014 passed by the learned Civil Judge, Senior Division, Rajgurunagar below Exhibit 40 in Regular Civil Suit No. 302 of 2007. By that order, the learned trial Judge allowed the application made by the respondent/defendant for condoning the delay in depositing costs of Rs.5000/- in pursuance of the order dated 15.10.2012.

3. It appears that no cross order was passed by the learned trial Judge against the defendant on 26.4.2011. The defendant filed application Exhibit-31 for setting aside that order. On

15.10.2012, the learned trial Judge allowed that application and set aside no cross order subject to payment of costs of Rs.5000/- to Legal Services Authority. Costs were ordered to be paid within 5 days from the date of the order. The defendant did not deposit the amount within five days and filed application on 20.1.2014 for condoning the delay in depositing the costs of Rs.5000/-. By the impugned order, the learned trial Judge allowed that application. It is against this order, the plaintiffs have instituted the present petition.

4. In support of this petition, Mr. Gupte raised twofold contentions. In the first place, he submitted that there is delay of 1.1/2 years in making the application. No sufficient cause is made out for condoning the delay. Secondly, the impugned order was passed without hearing the petitioners/plaintiffs on the same day. In other words, the impugned order is passed in gross violation of principles of natural justice.

5. As noted earlier, by order dated 15.10.2012, the learned trial Judge set aside 'No Cross Order' passed on 26.4.2011 subject to payment of costs of Rs.5000/- within 5 days to legal Services Authority. It also appears that in pursuance of the impugned order, defendant has paid costs of Rs. 5000/- to Legal Services Authority. A perusal of the application shows that the defendant has challenged No W.S. order before this Court by filing Writ Petition No.9171 of 2011. That Petition was dismissed

on 28.6.2013. Mr Gupte submitted that as of date, suit is proceeding without written statement of the defendant. Thus, the defendant will not be in a position to lead evidence as he is not allowed to file written statement. If he is not permitted to cross examine also, the defendant will not be in a position to participate effectively in the trial. In view thereof, in my opinion, this is not a fit case for invocation of powers under Article 227 of the Constitution of India. Hence, petition fails and the same is dismissed.

6. Mr. Gupte submits that the petitioners are senior citizens and the suit is pending since 2007. In view thereof, the learned trial Judge is requested to decide the suit as expeditiously as possible and preferably within one year from production of the authenticated copy of this order.

7. All parties including the trial Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)