

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

WRIT PETITION NO.7060 OF 2013

Shri Khandu Baban Hande & Ors.

...Petitioners

vs.

Smt. Sushila Yashwant Tupe, through LRS. Smt.

Sarika Prakash Kumar & Ors.

...Respondents

Mr. S. V. Sadavarte for the Petitioners.

Mr. Ajay A. Joshi for Respondent No.1.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 6th November, 2017

P.C.:

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

2. The Petitioners herein happen to be the Defendants in Special Civil Suit No.1815/2011. The summons in the said suit were served upon the Defendants on 4/11/2011. The Defendants had failed to file their written statement within 90 days from receiving court's summons and therefore the Petitioners herein had filed an application on 25/9/2012 seeking relief of setting aside the order of no written statement. The said order was passed on 3/3/2012.

3. The learned Trial Court had called for say of the Plaintiffs which was not filed. The Court had decided the application on merits and

had taken into consideration provisions of Order 8 Rule 1 of the CPC. Application has to be filed within 30 days however time can be extended upto 90 days.

4. The said application to accept the written statement and to condone the delay in filing the written statement was rejected by order dated 22/3/2013. The suit is of the year 2011.

5. Mr. Sadavarte, Learned counsel for the Petitioners submits that the learned Court has taken a pedantic approach and has rejected the application since it was filed almost 90 days after the period of limitation had expired. It is also submitted that the said order would cause great prejudice to the Petitioners as they would be deprived of their statutory right to defend the suit and in that circumstances it would also be difficult to frame issues after considering the rival contention. Hence, petition deserved to be allowed.

6. Mr. Joshi, Learned counsel for the Respondents has vehemently submitted that the Petition deserves to be rejected as the Petitioners had not mentioned in his application below Exh.21 the reasons for not being diligent and all that was stated is that he did not have sufficient instructions as well as other copies.

7. However, since this Court is of the opinion that said pedantic approach cannot be taken in matters like the present one, the Petition deserves to be allowed subject to payment of cost of Rs.1,000/- to be deposited in the Trial Court. Hence, the order dated 22/3/2013 is hereby quashed and set aside. The Petitioners shall file the written statement on or before 22/11/2017 along with the cost of Rs.1,000/- in the Trial Court. The Learned 4th Joint Civil Judge, Sr. Dn. Pune shall accept the written

statement and permit the Plaintiffs to proceed with the suit .

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

(SMT. SADHANA S. JADHAV, J.)