

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10102 OF 2015

Smt. Indubai Vishwanath Dashpute & Anr. ...	Petitioners
Vs.	
Shri Dnyaneshwar Eknath Wagh & Ors. ...	Respondents

Mr.Rahul D. Motkari, for the petitioners
Mr.Sachin Gite, for the respondents Nos. 1 to 3.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 30th October, 2017.

P.C.

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

2. The petitioners herein happen to be the original defendant Nos. 4 and 5 in Regular Civil Suit No.553 of 2012 pending before the Civil Judge, Junior Division at Nashik. It appears from the records that the defendants had failed to file the written statement and, therefore, “No W.S.” order was passed. The defendants had filed an application seeking relief of setting aside No W.S. and accept the written statement. On 5.12.2012, the said application was allowed with a rider that the defendants shall pay costs of R.1,000/- within 14 days from passing of the said order.

3. It appears from the record that the petitioners had paid costs on

5.12.2013. There was delay in paying the said costs. However, the defendants had not filed any application seeking condonation of delay in depositing the costs and therefore, the plaintiffs had raised an objection to that effect. The Civil Judge, Senior Division, Nashik was of the opinion that there was breach of the order and yet the application was accepted by the order dated 11.3.2015 and the suit has proceeded ex-parte.

4. The learned counsel for the petitioners submits that the written statement is taken on record and marked as Exhibit 40.

5. This Court by an order dated 31.10.2015 had directed the petitioner to deposit an amount of Rs.2,000/- in the trial Court on the next date and in pursuance of the said order, the written statement has been taken on record. In view of this, it is clear that the suit will not proceed ex-prte against the original defendants Nos. 4 and 5 and the learned trial Court shall proceed to the next stage of framing of issues on the basis of the contentions raised in the plaint as well as the written statement filed by the original defendant Nos. 4 and 5.

6. The Petition is allowed in the above terms. The order dated 11.3.2015 is hereby quashed and set aside. Rule is made absolute in terms of prayer clause (b).

[SMT. SADHANA S.JADHAV, J.]