

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9197 OF 2015

Eknath Waman Bodake & Ors. .. Petitioners
-Versus-
Smt. Punjabai Kachru Kad & Ors. ..Respondents

Mr. Sachin S. Padaye i/b. Girish R. Agrawal for petitioners
Mr. S.H.Kankal, AGP for State
Mr. R.D.Motkari for respondent Nos. 1 and 2.

CORAM : MR. M.S.KARNIK, J.

DATE : 30th January 2017.

P.C.

1] The petitioners are the original defendant Nos. 1 to 5 against whom the preset respondent Nos. 1 and 2 – original plaintiffs had filed a suit for declaration and partition of 1/3rd share each in the suit property. The suit was filed on 16th October 2012. On 1st November 2015, the learned trial Judge passed an order against the petitioners as well as other defendants in the suit that the suit may proceed without their say. The petitioners filed an application for setting aside “No W.S.” order passed on 5th January 2015.

2] According to the petitioners, they are agriculturists and they were

so involved in their agricultural activities that they could not file their written statement within time. Moreover, the mother of the petitioner No.1 i.e. petitioner No.3 herein is very old and she had to be looked after, as a result of which also the written statement could not be filed and, therefore, there is consequent delay of almost 26 months in filing written statement.

3] The learned trial court by a common order passed on 5th March 2015 below Exh.38 rejected the application on the ground that the delay of nearly 26 months has not been explained.

4] In the challenge to this order, the learned Counsel for the petitioners has contended that the petitioners are poor agriculturists and, it is because of the ailment of the petitioner No.3 that they could not file written statement within the stipulated time. The said delay is unintentional. According to them, they should be given fair opportunity of representing their case and hence prayed for setting aside "No W.S." order. The learned Counsel for the petitioners indicated that they are willing to pay cost of Rs.10,000/- to the respondent plaintiffs if the order of "No W.S." is set aside.

5] The learned Counsel for the respondents – plaintiffs, however,

opposed this request and submits that the delay has not been satisfactorily explained. According to them there is no error apparent with the view taken by the learned trial Judge in rejecting the application for setting aside the “No W.S. Order”.

6] In my opinion the petitioners should be given an opportunity of filing their written statement by condoning the delay in filing W.S. The petitioners have come out with the case that they are poor agriculturists and that they had to look after their ailing mother as a result of which there has been delay in filing the written statement. According to me, no prejudice will be caused to the respondents plaintiffs if the “No WS” order is set aside and in fact they can be adequately compensated by imposing costs on the petitioners.

7] Hence, the following order:-

(I) The impugned order dated 5th March 2015 below Exh.38 is set aside;

(II) Petitioners – original defendants Nos. 1 to 5 have already filed written statement. The learned trial Judge is directed to take the same on record on payment of costs of Rs.10,000/- to be paid by the petitioners to the respondent Nos. 1 and 2 within two weeks from today;

- (III) Costs condition precedent;
- (IV) If costs are not paid within two weeks from today the order impugned passed below Exh.38 to stand;
- (V) Petition disposed of.

(M.S.KARNIK, J)