

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

WRIT PETITION NO. 10832 OF 2012

Shri Gulab Vithoba Sonawane. ... Petitioner.
Versus
Shri Pritam Manohar Pardeshi & anr. ... Respondents.

Mr. S.V. Sadavarte, advocate for petitioner.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 27, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioner. None appears for the respondent. Affidavit of service has been filed.

2 Rule. Rule made returnable forthwith.

3 The present petitioner happens to be the original Defendant No. 2 in Civil Suit No. 5320 of 2008. The suit was filed in the year 2008 before Civil Judge, S.D. at Pune and was transferred to the Court of Joint Civil Judge, J.D. Khed in the year 2012. The learned Civil Judge

at Pune had passed an order of no W.S. on 22/8/2008. An application was filed on 25/8/2008 seeking setting aside the order of no W.S.

4 The learned Counsel for the Petitioner submits that written statement was not filed alongwith application seeking the relief of setting aside the said order of “no W.S.”. No exceptional circumstances were brought on record. It was only stated that the petitioner is ignorant person and the relevant documents were not available to him within stipulated time and therefore, he could not file written statement. The application was rejected by Civil Judge, S.D., Pune on 18/11/2008.

5 Since the pecuniary jurisdiction of the court had changed by virtue of Full Bench Judgment of this Hon'ble Court, the matter was transferred to Civil Judge, J.D. at Khed in the year 2012. The impugned order dated 18/11/2008 has been challenged before this Court by filing writ petition on 30/12/2012 i.e. practically after lapse of more than 4 years. The notices were issued to the respondent by

an order dated 3/1/2010 and the matter got prolonged before this court due to want of sufficient time to serve upon the respondent. The respondent No. 2 was reported to be dead on 6/4/2009 and therefore, as per the order of Registrar Judicial I dated 13/1/2014 writ petition as against respondent No. 2 stood abated. The legal heirs of respondent No. 2 have not been brought on record before this Court. In fact, the whole suit was based upon the agreement dated 14/3/2006 executed between the present petitioner and the respondent No. 2. However, no steps were taken to bring the legal heirs of the respondent No. 2 on record. On 21/11/2015 it was submitted before this court that the next date in the trial court was in the last week of November, 2015 and therefore, interim relief was granted in terms of prayer clause (c) by which further proceedings in old Special Civil Suit No. 530 of 2008 i.e. R.C.S. No. 163 of 2012 pending before the Joint Civil Judge J.D. Khed were stayed.

7 Heard the learned Counsel for the Petitioner. It is true that the suit was transferred in the year 2012. However, there is no plausible

explanation for the inordinate delay in challenging the order dated 18/3/2008. This Court cannot be oblivious of the fact that the suit is of the year 2008. It has been pending for almost 9 years. For last 5 years it is pending before the Civil Judge, J.D. Khed. Even otherwise, on perusal of the application seeking the relief of setting aside the order of no W.S., it is seen that the written statement was not filed alongwith the application and there were no sufficient grounds for setting aside the earlier order.

8 In view of this, petition being sans merits stands dismissed. In the interest of justice, the Petitioner would be at liberty to adduce oral evidence during the course of proceedings. Rejection of the petition shall not be considered as an impediment to the defendant No.2 to defend the suit. Hence, the Petition stands dismissed. Needless to say that the interim relief granted earlier stands vacated. Rule is discharged accordingly.

(SMT. SADHANA S. JADHAV,J)