

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 508 of 2018

Kalawatibai W/o Asaram Dahatonde
age 59 years occupation household
R/o Wadala Bahiroba Taluka Newasa District Ahmednagar.

...Petitioner

VERSUS

Kansaram S/o Baburao Honde
age 54 years occupation agriculture
R/o Wadala Bahiroba Taluka Newasa District Ahmednagar

...Respondent

Mr Rahul R. Karpe, Advocate for petitioner
Mr V.S. Bedre, Advocate for respondent.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 4th June, 2018

JUDGMENT:

Heard learned Counsel for the petitioner. Rule. Rule made returnable forthwith. Heard learned Counsel for appearing parties finally by consent.

2. Learned Counsel Mr Karpe for petitioner submits that impugned order on application Exhibit 16 does not reflect application of mind to facts and circumstances of the case. He submits that petitioner is age old lady and her rights in immovable property are at stake. He submits that initially there had been "No written statement order" passed against her. However, subsequently, order as to "No Written statement" came to be set

aside. The Trial Court had been pleased to set aside "No written statement" order subject to depositing costs of Rs. 100/-, vide order dated 2nd July, 2014 on application Exhibit 13. However, costs could not be paid within stipulated time and application Exhibit 16, as such, has been filed, which came to be rejected. He submits that applicant is age old lady and further, that she is ignorant about procedural law and consequences of non-compliance of orders passed. He further points out the order passed by this Court on 17th January, 2018 referring to deposit of amount of Rs. 5000/- in the Trial Court. He submits that inconvenience suffered by the plaintiff/respondent is got remedied by direction of making payment of Rs. 5000/-. He further refers to that this Court has considered that it cannot be ignored that the suit property is an agricultural land and the petitioner is a poor lady agriculturist. He therefore, requests to allow the petition.

3. The learned Counsel for respondent submits that there is inordinate lengthy delay in the litigation instituted by the plaintiff. While order setting aside "No written statement order" passed in the year 2014 below application Exhibit 13, application Exhibit 16 has been moved in the year 2016. He submits that in the circumstances, petitioner may not be shown indulgence. Learned Counsel Mr Bedre therefore, supports the order.

4. Having regard to observations of this Court while passing order dated 17th January, 2018 particularly, the sentence *"However, it cannot be ignored that the suit property is an agricultural land and the petitioner is a poor lady agriculturist."* and further, a condition had been imposed of depositing an amount of Rs. 5000/- and, accordingly, petitioner is stated to have deposited the amount within stipulated period. There appears to be undercurrent in order dated 17th January, 2018 that the writ petition would be considered leniently. In the circumstances, it would be expedient to allow the writ petition. Amount of Rs. 5000/- deposited by petitioner be treated as costs for extension of time to deposit the costs imposed under order dated 2nd July, 2014. As such, petition is allowed in terms of Prayer Clause "B". Petitioner to deposit sum of Rs. 100/- (one hundred only) as directed by Trial Court in the Trial Court in right earnest. Said amount alongwith amount of Rs. 5000/- may be withdrawn by the respondent. The writ petition is allowed. Rule made absolute accordingly.

**(SUNIL P. DESHMUKH),
JUDGE.**