

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO. 2419 OF 2017

KAVERI KASHINATH CHAVAN THROUGH POWER OF
ATTORNEY HOLDER KASHINATH DAGDU CHAVAN
VERSUS
SUBHASH BABURAO ZINE AND OTHERS

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Advocate for Petitioner : Mr. Karpe Rahul R.
AGP for Respondent Nos. 1 to 5 : Mr. V. H. Dighe

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CORAM : V. K. JADHAV, J.
DATED : 12th APRIL, 2018

PER COURT:-

1. The petitioner/original defendant no.2 has failed to file his written statement within time and as such, on 31.07.2014, “No Written Statement” order came to be passed in the suit bearing R.C.S. No. 52 of 2014 instituted by respondent nos. 1 to 5/original plaintiffs. Respondent nos. 1 to 5 had instituted the said suit for declaration of their 1/5th share in the suit property, possession as well as the relief of perpetual injunction. The petitioner/original defendant no.2 had filed application exhibit 26 on 23.11.2016 for setting aside the said “No WS” order. However, by the impugned order dated 07.01.2017, the trial

court has rejected the said application. Hence this Writ Petition.

2. The learned counsel for the petitioner submits that even though the petitioner had appeared in the suit in response to the summons served to her husband on 07.03.2014, she could not file written statement within the stipulated period due to ill health and also on account of mis-communication and some sort of negligence on the part of her counsel. The learned counsel submits that the said R.C.S. No. 52 of 2014 is a collusive suit in between the plaintiffs and original defendant no.1 and if an opportunity is not given to the present petitioner to defend the suit, the petitioner would be put to irreparable loss. The suit pertains to immovable property and one more chance needs to be given to the petitioner to contest the suit on merits. The learned counsel submits that the petitioner is ready to pay the costs if directed by this Court.

3. The learned counsel for the respondents/original plaintiffs submits that the petitioner has instituted another suit bearing R.C.S. No.175 of 2014 and she had attended the said suit through her power of attorney and even the trial court has

decreed the said suit. The learned counsel submits that the petitioner has made unnecessary allegations against her counsel and she had also appeared in the suit through her general power of attorney and as such, there is no question of her ill health to be considered as a ground for setting aside the “No WS” order. The learned counsel submits that the petitioner was negligent and as such, the trial court has rightly rejected the application. No interference is required.

4. On perusal of the order passed by the trial court, it appears that the trial court has wrongly placed reliance on the case of *New Indian Assurance Company Ltd. Vs Hill Multipurpose Cold Storage* (Civil Appeal No. 10941/10942 of 2013 dated 04/12/2015). Apart from that, it appears that the petitioner has tried to explain the delay caused in filing written statement. The dispute relates to the immovable property and no purpose would be served in obtaining *ex parte* decree as against the petitioner if at all the defendant no.1 is not contesting the suit. Thus, the application exhibit 26 can be allowed subject to heavy costs with further directions to the trial court to dispose of the suit as expeditiously as possible. Hence the following order:

ORDER

- I. The Writ Petition is allowed.
- II. The impugned order dated 07.01.2017 passed by the 2nd Joint Civil Judge, Junior Division, Shrirampur, below exhibit 26 in R.C.S. No. 52 of 2014 is hereby quashed and set aside.
- III. The application exhibit 26 in R.S.C. No. 52 of 2014 is hereby allowed in terms of its prayer clause subject to costs of Rs.20,000/- (Rupees twenty thousand) to be paid by the petitioner to the respondents/original plaintiffs within a period of four weeks from today before the trial court.
- IV. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

vsm/