

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 WRIT PETITION NO. 3478 OF 2017

MADHU S/O MUNJAJI KARALE AND ANOTHER
VERSUS
KISAN GANGARAM MUKHMAHALE AND ANOTHER

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Advocate for Petitioners : Mr. Jadhavar S. G.
Advocate for Respondent No. 1 : Mr. P. S. Agrawal

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CORAM : V. K. JADHAV, J.
DATED : 20th FEBRUARY, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. This Writ Petition has been preferred against the order dated 09.01.2017 passed by the trial Court rejecting the application Exhibit 36 filed by the petitioners/original defendants for accepting the written statement.
3. The learned counsel for the petitioners submits that the petitioners could not file written statement within time due to nonavailability of certain information and documents. Even the trial Court has not passed the order of "No WS". However, by

filing application Exhibit 36, the petitioners requested the trial Court to accept their written statement. However, by the impugned order, the trial Court has turned down the said request. The learned counsel submits that the Suit pertains to the immovable property and the respondent no.1/original plaintiff is seeking a decree of perpetual injunction. The learned counsel submits that the petitioners are ready to pay the costs for filing the written statement belatedly and the same may be directed to be accepted.

4. The learned counsel for respondent no.1-original plaintiff submits that, though duly served on 13.01.2016, the petitioners failed to file written statement till the impugned order passed by the trial Court. The petitioners have not filed written statement within statutory period and as such, the trial Court has rightly rejected the application Exhibit 36.

5. It appears that the dispute pertains to the immovable property and due to nonavailability of certain information and documents, the petitioners could not file their written statement within time. Even till that time, the trial Court has not passed

“No WS” order on Exhibit 1/plaint. In view of the above, the petitioners-defendants may be given one chance to defend the Suit on merits by accepting their written statement. However, for that purpose, the petitioners are required to be saddled with costs. Hence, the following order:

ORDER

- I. The Writ Petition is hereby partly allowed.
- II. The impugned order dated 09.01.2017 passed by the Civil Judge Junior Division, Aundha Nagnath below Exhibit 36 in Regular Civil Suit No. 70 of 2015 is hereby quashed and set aside.
- III. The application Exhibit 36 is hereby allowed in terms of its prayer clause subject to costs of Rs.5,000/- (Rupees Five Thousand only) to be paid by the petitioners to respondent no.1/original plaintiff within a period of two weeks before the trial Court.
- IV. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

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