

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 8795 of 2018

1. Vaijnath S/o Sambnaik Gajre
 age 73 years occupation retired
 R/o B-40/4, near Railway Gate,
 Shivaji Nagar, Aurangabad
2. Gangadhar S/o Sambnaik Gajre,
 age 68 years occupation nil
 R/o Vidyanagar, near Ganpati Temple,
 Parbhani Taluka and Dist. Parbhani.

...Petitioners

VERSUS

Kisan S/o Chokhoba Gaikwad,
age 71 years occupation agriculture
R/o Budh Nagar, Manwat District Parbhani

...Respondent

Mr Pravin N. Kalani, Advocate for petitioners.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 7th August, 2018

ORDER :

1. Heard learned counsel for the petitioner.
2. Purportedly aggrieved by order dated 17th December 2015 passed on application Exhibit – 48 by the Civil Judge (Junior Division), Manwat, in regular civil suit No. 60 of 2012, petitioner, who is original plaintiff, is before this court. Under impugned order

request of defendant to file written statement came to be accepted in the peculiar facts involved in the case that while defendant had filed say to application for temporary injunction he had been under impression that no further separate written statement would be required to be filed. Further proceedings also went on, on that footing. Accordingly, issues came to be framed. In fact, plaintiff as well proceeded without objecting to framing of issues, presumably under impression that technicality of filing separate written statement may not be necessary. Since there is no separate written statement on record, application Exhibit - 48 had been moved by defendant for filing separate written statement by way of precaution in order that technicality shall not impede progress further in future, and the same came to be accepted.

3. The trial court in quite some detail in paragraph No.2 has set out reasons for accepting request made under application Exhibit - 48 and further has considered that it would not only be in the fitness of things to allow removal of technical deficiency but also for healthy trial written statement may have to be accepted and, as such has allowed request. No prejudice can be said to have been caused to plaintiff in the process. Over and above, while this order has been passed in 2015, the plaintiffs have moved this petition in 2018 without giving any plausible reason for time

lapse between order impugned and institution of the writ petition.

In the circumstances, the writ petition also suffers laches.

4. The writ petition, as such, does not appear to carry any substance and is accordingly dismissed.

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

Madkar