

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

WRIT PETITION NO. 3276 OF 2018

Madhav s/o Shankarappa Niture
Age : 61 years, Occ. Agri,
R/o. Niture Niwas, Chounda Galli,
Ahmednpur Tq. Ahmedpur, Dist. Latur.

.. Petitioner
(Orig. Deft. No.5)

versus

1. Gangadhar s/o Hanmant Satapure,
Age : 60 years, Occu : Agri,
R/o. Malegaon (Kh) Post. Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
2. Shivprasad s/o Bapurao Satapure,
(Deleted as per order below Exh. 103
dated 06/08/2015]
3. Vidyasagar s/o Bapurao Satapure,
Age : 48 years, Occu : Agri.,
R/o As above
4. Satayabhama w/o Bapurao Satapure,
Age : 72 years, Occu : Household,
R/o As above
5. Manohar s/o Jyotiba Chevle
(Deleted as per order below Exh. 103
dated 06/08/2015]
6. Kamalbai W/o Narayan Bharde,
Age : 71 years, Occu : Household,
R/o Behind Mahatma Gandhi College,
Ahmedpur, Tq. Ahmedpur, Dist. Latur
7. Manyabai @ Kamalbai W/o Sangram Niture,
Age : 66 years, Occu : Household,
R/o Handarguli, Tq. Udgir, Dist. Latur.
8. Vijamala W/o Shivsambh Gadge,
Age : 64 years, Occu : Household,
R/o Nandur (Bk) Post : Ahmedpur,
Tq. Ahmedpur, Dist. Latur

9. Parappa s/o Sakharappa Gadge,
Age : 76 years, occu: Agri & business,
R/o Hamne Galli, Ahmedpur, Tq. :
Ahmedpur, Dist. Latur.

10. Govind s/o Bapurao Shelke,
Age : 40 years, Occu : Agri.,
R/o Malegaon (Kh), Post Ahmedpur,
Tq. Ahmedpur, Dist. Latur

11. Surekha W/o Shivprasad Satapure,
Age : 39 years, Occu: Household,
R/o as above

(Deleted as per order below Exh. 103
dated 06/08/2015]

12. Rushikesh s/o Shivprasad Satapure,
Age : 21 years, occu : Agri.,
R/o as above

(Deleted as per order below Exh. 103
dated 06/08/2015]

13. Rasikabai w/o Manohar Chole,
Age : 88 years, Occu: Household,
R/o as above

(Deleted as per order below Exh. 103
dated 06/08/2015]

14. Balaji s/o Manohar Chole,
Age : 57 years, Occu : Agri.,
R/o as above

(Deleted as per order below Exh. 103
dated 06/08/2015]

15. Harischandra s/o Manohar Chole,
Age : 64 years, Occu : Agri.,
R/o as above

(Deleted as per order below Exh. 103
dated 06/08/2015]

.. Respondents/
(No. 1 orig.
Plaintiff, Nos.
2 and 3 Orig.
Defts.)

Mr. Sunil V. Warad, Advocate for petitioner
Mr. H. I. Pathan, Advocate for respondent no. 1

CORAM : SUNIL P. DESHMUKH, J.

DATE : 11th June, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned advocates for the parties finally by consent.

2. The petitioner who is defendant no. 5 in regular civil suit no. 277 of 12 (on transfer of the suit to joint civil judge, senior division, Ahmedpur renumbered as regular civil suit no. 74 of 2013) challenges legality, validity, propriety and correctness of order dated 18-12-2017 passed by Civil Judge, Senior Division, Ahmedpur, whereunder, application by petitioner at Exhibit-140 for condonation of delay in filing application for setting aside ' *No written statement order* ' has been rejected.

3. Learned Advocate for the petitioner, Mr. S. V. Warad submits that the petitioner had appeared before court through his counsel on 16-02-2013 on service of summons issued on the very day. Thereafter, the matter proceeded with. The matter was being attended to through advocate. Petitioner was not given to understand or advice to file written statement immediately. Trial court, appears to have passed

order on 16-12-2013 closing right of petitioner to file written statement. Petitioner had come to know about '*No written statement order*' dated 16-12-2013 only on 07-07-2017 from his new advocate. On the very day, petitioner had filed applications, one at Exhibit-140 for condonation of delay in filing application for setting aside '*No written statement order*' and the other at Exhibit-142 for setting aside '*No written statement order*' along with affidavit.

4. Reasons given in applications at Exhibits-140 and 142 are that petitioner being an old aged person it has affected mobility. He is facing various litigations since 1962, he had to search voluminous record for relevant documents from 1962 from various courts. This consumed a lot of time.

5. Mr Warad submits that belated filing of written statement was not in the interest of petitioner. Delay in the same could not be said to be intentional or deliberate. He submits, advocate earlier appointed had not instructed that it is imperative to file written statement immediately. While it was considered documents are proper to defend the suit and time was consumed in procuring the same, it resulted missing prescribed period. Impugned order passed by the trial court is

on technical grounds. Applications at Exhibits-140 and 142 were rejected by trial court taking up a pedantic approach. Old age of the petitioner has not been considered by trial court. Suit is at the stage of deciding interim relief application filed by the plaintiffs, which is yet pending decision. A meritorious case of petitioner for want written statement would be defeated. In the circumstances petitioner deserves an opportunity in the interest of justice and to have fair trial and contest on merits by allowing applications at Exhibits-140 and 142, by setting aside impugned order passed, permitting written statement to be taken on record.

6. Learned counsel submits, in catena of decisions, the apex court has held that, it must be grasped that, judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice and is expected to do so.

7. On other hand, learned Advocate Mr H. I. Pathan appearing for respondent no. 1 submits that petitioner has not taken any efforts to attend to and look into matter and blames his advocate for ' *No written statement order* '. He submits, petitioner failed to file application within time for

setting aside '*No written statement order*'. Mr. Pathan submits, petitioner has not given particulars of documents in search of which time is claimed to have been consumed. Apart from this, petitioner's cousin was working as a clerk in civil court at Ahmedpur till 2015 was assisting petitioner in suit. While litigations are going on between petitioner and respondents since 1962, petitioner has failed to show due diligence in searching the documents in respect of the litigations and yet he claims that circumstances were beyond his reach to get requisite documents. It is difficult to accept that petitioner failed to file written statement within time because of purported reasons in applications. Those are not convincing and are not sufficient.

8. Trial court had rejected applications at Exhibit-140 and Exhibit-142 having regard to factual position, observing that insufficient and unconvincing reasons were assigned by petitioner for justifying huge delay caused to file applications.

9. Learned advocate for respondent no. 1 submits that Petitioner has not given proper instructions to his counsel. Submission that the temporary injunction application is still pending is not correct. The same has been partly allowed by

trial court on 05-03-2018. He submits that writ petition is devoid of merits and deserves to be dismissed with heavy costs.

10. After hearing learned advocate for parties, it appears that the petitioner had caused appearance engaging counsel in the proceeding. it has been submitted that it was not given to understand defence by way of written statement is to be filed in particular time. Looking at the contents of applications at Exhibit-140 and Exhibit-142, time is stated to be consumed looking for documents in respect of litigations from 1962 and being of old age, with affected mobility petitioner was unable to search required documents soon before proscribed period. It is contended by respondent no.1 that, petitioner had been attending the proceedings regularly after ' *No written statement order* ' had been passed, which to a large extent is an indication of that, applications Exhibit-140 and Exhibit-142 for want of proper legal advice were not earlier.

11. It appears, petitioner become aware of ' *No written statement order* ' through his new advocate on 07-07-2017 and on same day applications at Exhibits-140 and 142 were filed. Admittedly, litigations between parties are going on

from 1962. Delay in filing application to set aside ' *No written statement order* ' within required period does not appear to be deliberate and intentional. Pedantic and technical approach in respect of civil rights may be avoided and a litigant should not be put to sufferance for want of proper legal advice.

12. The Hon'ble Apex court in series of judgments in *Collector, Land Acquisition, Anantanag vs Mst, Katiji*, reported in *AIR 1987 SC 1353* has considered that expression "sufficient cause" is to receive liberal construction, to advance substantial justice. Primary function of the court is to adjudicate dispute among parties and to advance substantial justice. Unless there is absolute negligence on part of a party, ordinarily, delay in filing application is to be condoned. It may as well be relevant to take into account guidelines of supreme court as given in para 21 and 22 of *Esha Bhattacharjee vs Managing Committee of Pagunathpur Nafar Academy and Others* reported in *(2013) 12 SCC 649*.

13. Taking overall view of the matter and having regard to attending circumstances, It, appears to be appropriate to give opportunity to petitioner to file written statement by quashing

and setting aside impugned order, in order to have healthy contest on merits. It would, therefore, be proper to accede to the request under writ petition in larger interest of justice. However, at the same time inconvenience caused to other side is required to be taken care of by awarding costs.

14. In view of aforesaid, orders passed by the civil judge senior division, Ahmedpur on Exhibits-140 and 142 on 18-12-2017 are quashed and set aside. Applications at Exhibit-140 and 142 stand allowed, subject to payment of costs of Rs. 25,000/-. Costs to be deposited in trial court within a period of eight weeks from the date of receipt of writ of this order for being paid to respondent no.1-plaintiff.

15. Accordingly writ petition is allowed.

16. Rule made absolute in aforesaid terms.

SUNIL P. DESHMUKH,
JUDGE

pnd/-