

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

WRIT PETITION NO. 6443 OF 2018

Sudhakar s/o Trimbak Wagh .. Petitioner

versus

Mr. Vaibhav Padmakar Wagh and others .. Respondents

Mr M. D. Narwadkar, Advocate for petitioner

CORAM : SUNIL P. DESHMUKH, J.

DATE : 27th June, 2018

ORDER :

1. Heard.

2. Petitioner – original plaintiff in regular civil suit bearing no. 38 of 2012 is before this court, aggrieved by order dated 26-09-2017 passed by civil judge, junior division, Jamkhed whereunder civil miscellaneous application bearing no. 11 of 2015 filed by added defendants no. 5 and 6 for setting aside *ex-parte* order passed against them in said suit on 04-08-2012 has been allowed and they have been permitted to file written statement in the suit.

3. Applicants contend that, suit to proceed *ex-parte* order had been passed against them on 04-08-2012. Mother of defendant no.5-applicant no. 1 in aforesaid civil miscellaneous application had been suffering illness for a long time. She expired on 31-10-2013. Both the applicants used to stay in remote area. They were not aware about aforesaid legal proceedings initiated and pending. No notice of the proceedings had been received at the end of applicant no. 1. When notices had been issued by court and paper publication was given, applicant no. 2 – original defendant no. 6 had not been in village and had been away for earning livelihood.

4. When applicant no. 2 had returned to village, she came to know about the same from villagers. Thereafter, they caused their appearance in the suit on 08-11-2013 and came to know about *ex-parte* order having been passed on 04-08-2012 and as such they moved aforesaid miscellaneous application for setting aside said order.

5. While opposing civil miscellaneous application, it appears to be the contention of present petitioner that during pendency of suit, defendants no. 5 and 6 have purchased property from defendants no. 1 and 3 under sale deed dated

22-04-2012 and having got knowledge of the same, petitioner impleaded defendants no. 5 and 6 in the suit.

6. Learned judge has referred to that to have adjudication of suit on merits it would be appropriate to give opportunity to defendants to contest the suit and further that it would also avoid multiplicity of litigation. Perusal of impugned order thus shows that it is not a case to exercise extra-ordinary powers of this court and to dabble with proceedings before trial court.

7. In the circumstances, writ petition is not entertained and is rejected.

8. Since suit is of 2012, it would be appropriate that the trial court proceeds with suit expeditiously and disposes it of preferably within a period of one year from the date of receipt of writ of this order.

SUNIL P. DESHMUKH,
JUDGE

pnd