

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7144 OF 2015
(Bhimrao s/o Janu Birare Vs. Milind s/o Sadu Birare and others)

Mr.Shaikh Kayyum Najir, Advocate for the petitioner.
Mr.R.S.Deshmukh, Advocate for respondent Nos. 8 and 17.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 23/07/2018

PER COURT :

1. The petitioner/original defendant is aggrieved by the order dated 18/12/2014 by which "No W.S." order has been passed in RCS No.154/2014 and also by the order dated 07/04/2015, by which application Exh.11 has been rejected.

2. Learned Advocate appearing on behalf of respondent Nos. 8 and 17 has strenuously opposed this petition contending that the delay is deliberate and aimed at frustrating the plaintiffs. The suit is for partition and separate possession and the defendant desires to tire out the plaintiffs.

3. This petition is dismissed as against respondent No.16 and respondent Nos. 1 to 7, 9 to 15 and 18 have not appeared in this

matter, though served.

4. I find from the record that the petitioner/defendant was served with Court notice on 05/09/2014. He appeared on 10/09/2014. "No W.S. order" is passed on 18/12/2014. Exh.11 is filed on 08/01/2015 and rejected on 07/04/2015. The suit property is an immovable agricultural land. The plaintiffs would virtually succeed if the sole defendant is disallowed from filing his written statement. The delay does not appear to be inordinate so as to deprive the defendant of one opportunity. The written statement was tendered alongwith Exh.11 before the Trial Court.

5. Considering the above factors and in the light of the statement of the learned Advocate for respondent Nos. 8 and 17 that the costs be donated for the treatment of poor patients, this petition is allowed. The impugned orders dated 18/12/2014 and 07/04/2015 are set aside. Application Exh.11 stands allowed. The written statement shall be taken on record on the following conditions :-

[a] The petitioner shall deposit an amount of Rs.2,000/- (Rs.Two thousand only) with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of "**Dean,**

Government Medical College and Hospital, Aurangabad CSR Fund”), on or before 10/08/2018.

[b] The petitioner shall produce the receipt of such deposit before the Trial Court on or before 20/08/2018.

[c] If the above directions are not complied with, the “No W.S. order’ dated 18/12/2014 shall stand restored without reference to the Court.

(Ravindra V.Ghuge, J.)