

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

**WRIT PETITION NO. 8284 OF 2017**

VISHAL MAHADEO CHOBHE  
VERSUS  
SANJANA CHANDRAKANT GANGARDE AND OTHERS

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Advocate for Petitioner : Mr. Sonwane Mahesh R.  
Advocate for Respondent 1 : Mr Narwade Narayan B.  
Respondent nos. 2 to 7 served – absent.

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**CORAM : V.K. JADHAV, J.**  
**Dated: April 25, 2018**

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**PER COURT :-**

1. Heard finally with consent at admission stage.
2. Petitioner is the original defendant no.3. Petitioner has failed to file written statement within time and, as such, the trial court has passed 'No WS' order. Petitioner, therefore, filed an application exh.19/1 in R.C.S. No.182/2014 for setting aside the 'No WS' order and to accept the written statement, however, the trial court, by impugned order dated 7.3.2017 rejected the said application. Hence, this writ petition.

3. Learned counsel for the petitioner/original defendant no.3 submits that, the respondent/plaintiff has instituted the suit for partition and separate possession in respect of the ancestral property. The relations of the petitioner with the respondent plaintiff is not at all denied. The earlier advocate has not communicated the date and, as such, written statement could not be filed. Learned counsel submits that, the petitioner is ready to pay the costs.

4. Learned counsel for respondents/plaintiffs submits that, there is an inordinate delay of one and half years in filing the application exh.19/1 for setting aside the 'No W.S.' order. Learned counsel submits that, it was the duty of the petitioner to stay in contact with his advocate on record, however, by making allegations against the counsel, the petitioner has filed the application for setting aside the 'No W.S' order. Trial Court has thus rightly rejected the application exh.19/1. No interference is required.

5. It appears that, the respondents/plaintiffs have instituted the suit in respect of the joint Hindu family property for partition, separate possession against her own brother and other family members. Present petitioner is the real son of her brother i.e. defendant no.1. In view of the above, petitioner may be given one more opportunity to contest the suit on merits, however, the petitioner is required to be saddled with costs for his inaction for a considerable period. Hence, following order.

### **O R D E R**

- I. Writ Petition is hereby allowed.
- II. The impugned order passed below exh.19/1 in Regular Civil Suit No.182/2014 dated 7.3.2017 by 5<sup>th</sup> Jt. Civil Judge S.D., Ahmednagar is hereby quashed and set aside.
- III. Application exh.19/1 is hereby allowed subject to costs of Rs.7,500/- (Rs. Seven Thousand five hundred) to be paid by the petitioner to respondents within a period of four weeks from today before the trial court.

IV. Writ Petition accordingly disposed of.

**( V.K. JADHAV, J. )**

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