

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

WRIT PETITION NO. 9842 OF 2017

Vishal s/o Bajirao Chabukswar
Age : 25 years, occup. Agril., .. Petitioner/
R/o Jakhangaon, Tq. Nagar, Original
District : Ahmednagar Defendant no.2

versus

1. Sangita Bhausaheb Gaikwad,
Age : 37 years, Occu. : Agril.,
2. Sulochana Dadu Chabukswar,
Age : 35 years, Occu. Agril.,
3. Sunita Bajirao Chabukswar,
Age : 45 years, Occu. Agril.,
4. Kiran s/o Bajirao Chabukswar,
Age : 33 years, Occu. Agri.,
5. Balu s/o Bajirao Chabukswar,
Age : 18 years, occu. Agri.

All R/o Jakhangaon, Tq. Nagar,
District : Ahmednagar .. Respondents

Ms L. R. Thakur, Advocate holding for Mr D. R. Jaybhar,
Advocate for petitioner

CORAM : SUNIL P. DESHMUKH, J.

DATE : 24th September, 2018

ORAL JUDGMENT:

1. In spite of service of notice by for final disposal by this court, no appearance is caused on behalf of respondents.

2. Heard learned advocate appearing on behalf of petitioner - defendant no. 2 in regular civil suit bearing number 519 of 2012.

3. Petitioner is aggrieved by order dated 25-04-2017 on Exhibit - 57 in regular civil suit bearing no. 519 of 2018 whereunder the 8th joint civil judge, junior division, Ahmednagar, has rejected the request of present petitioner for setting aside '*no evidence order*' dated 23-03-2016.

4. Perusal of impugned order shows, it has been considered that petitioner is not prosecuting the matter with diligence as expected. There are quite a few aberrations in conducting the matter.

5. Learned counsel for petitioner submits that albeit order impugned may depict that there are errors in prosecuting the matter by petitioner, those would not be entirely attributable to the petitioner.

6. It is submitted that due to unavoidable circumstances and unavailability of the advocate, timely steps could not be taken up. However, learned counsel, on instructions, states

that the matter would be prosecuted with expedition as the facts and circumstances would demand.

7. Non-appearance of respondents in writ petition, to a large extent, appears to be an indication of that they have no particular resistance to offer to writ petition and if the request thereunder is accepted.

8. In the larger interest of the parties and in order to avoid further lengthening of the matter in the later stage of litigation in respect of loss of opportunity during prosecution of the matter, it would be expedient to indulge into the request made under writ petition. Inconvenience caused in the process to the plaintiffs would, of course, have to be compensated by the petitioner.

9. As such, writ petition is allowed in terms of prayer clause (F) subject to payment of costs of Rs.10,000/- to the plaintiffs. The costs be deposited in trial court within a period of four weeks from the date of receipt of writ of this order. On deposit of costs, trial court to proceed further from the stage as would be occurring under this order. In case of payment of costs as directed, the same be disbursed to the plaintiffs. In case of failure to deposit costs within the period as

stipulated under present order, this order in writ petition would stand automatically recalled.

10. It would be appropriate, trial court proceeds with the matter expeditiously and disposes it of preferably within a period of ten months from the date of receipt of writ of this order.

11. Rule made absolute accordingly.

12. Writ petition is disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-