

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

17 WRIT PETITION NO. 9435 OF 2017

SUBHASH PUNAMCHAND SHARMA AND OTHERS
VERSUS
BHARATI ASHOK BHAVSAR [SHAVAGE] AND ANOTHER

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Advocate for Petitioners : Mr. Mukul S. Kulkarni.

Advocate for Respondent No.1 : Mr. S. A. Ambilwade, h/f Mr. A. S. Sawant.

...

CORAM : **V. K. JADHAV, J.**

DATE : 10th January, 2018.

ORDER:

. By this writ petition, the Petitioners / original Defendants have challenged the order passed by the Trial Court dated 18th April, 2017 below Exhibit 28 in Special Civil Suit No.79 of 2014. The Trial Court has passed "No W.S." order as against the present Petitioners and as such, the Petitioners have filed the application Exhibit 28 for setting aside the "No W.S." order. The Trial Court by impugned order dated 18th April, 2017, rejected the said application. Hence, this writ petition.

2 The learned counsel for Petitioners submits that during the pendency of the suit, the Petitioners / Defendants have filed an application Exhibit 17 for rejection of the plaint on the ground that the original agreement for which the specific performance is sought, is not

produced before the Court. The said application came to be decided on 3rd July, 2015. Thereafter, the Respondents / original Plaintiffs have produced the original agreement on 19th November, 2015 and it was forwarded to the Collector for impounding. On 18th October, 2016, the Collector has impounded the said document and on 19th November, 2016, the Trial Court has passed “No W.S.” order. On 23rd January, 2017, the Petitioners have filed the application Exhibit 28 for setting aside the order of “No W.S.”.

3 I have also heard the learned counsel for Respondents. The learned counsel for Respondents submits that for near about two years, the Petitioners / Defendants have not filed the written statement and they were not prevented from filing the written statement for any other cause. The Petitioners / Defendants have nothing to do with the impounding of the document and they ought to have filed the written statement within time to oppose the pleadings of the Respondents / Plaintiffs.

4 On perusal of the documents submitted alongwith the writ petition, it appears that the special civil suit is pending since 2014 for a relief of specific performance of contract. It further appears that till the year 2016, the Trial Court has not passed the “No W.S.” order as

against the Petitioners and after passing of “No W.S.” order, the Petitioners have filed the application Exhibit 28 for setting aside the said order.

5 In view of the above, I am inclined to allow this writ petition. However, the Petitioners are responsible for causing delay in filing the written statement and thus, they must be saddled with costs for the inaction on their part. Hence, the following order:

ORDER

- I. The writ petition is hereby allowed.
- II. The impugned order dated 18th April, 2017 below Exhibit 28 in Special Civil Suit No.79 of 2014, is hereby quashed and set aside.
- III. The application Exhibit 28 is hereby allowed in terms of its prayer clause subject to the costs of Rs.10,000/- (Rupees Ten Thousand Only), which is already deposited before this Court. The same shall be paid to the Respondents / original Plaintiffs forthwith.
- IV. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]