

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11495 of 2016

Hasnurbi w/o Maulasha & ors.

... **Versus** ...

Sai. Najir Sai. Nasir & ors.

...

Mr. M.K. Goyanka, Advocate for the petitioners

Mr. A.G. Talhar, Advocate for the respondent Nos.1 to 9

...

Coram : N.M. Jamdar, J.
Date : 19 November 2018

Oral Order :

1 The petitioners have challenged the orders passed by the learned Civil Judge Junior Division dated 31 August 2016 and 17 April 2013 rejecting the application for recalling of “No W.S. order” and giving permission to file W.S..

2 The learned counsel for the respondents opposed the petition and submitted that at belated stage, the written statement ought not to be allowed as the examination-in-chief is already over.

3 I have heard the learned counsel for the parties. The delay in

filing the written statement is of 39 months. The petitioners in the application had stated that the petitioners are senior citizens and suffering from various illness and they could not collect the documents in time.

4 Considering the ages of the petitioners, it cannot be said that the ground taken by petitioners is false or that it is entirely improbable. At the time of issuance of notice and granting stay to further proceeding, in the year 2016, the learned Single Judge of this Court has directed the petitioners to deposit an amount of ₹10,000/-.

5 Having considered the facts and circumstances of the case, the ages of the petitioners and the grounds raised, I am of the opinion that equities can be balanced by imposing costs on the petitioners. Accordingly, the impugned orders are set aside. Petitioners are directed to file written statement. Written statement is already tendered along with the application. The amount of ₹10,000/- deposited in this Court be treated as costs and the respondents are entitled to withdraw the same. The learned Civil Judge will give priority to the disposal of the civil suit, which is pending since 2012.

6 Writ petition is disposed of in above terms.

N.M. Jamdar, J.