

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9755 OF 2017
(Kedarnath s/o Gangadhar Badhan Vs. Ganesh Rohidas Patil and
another)

Mr.S.S.Deshmukh, Advocate for the petitioner.
Mr.C.S.Deshmukh, Advocate for respondent No.2.
Mr.G.D.Jain h/f Mr.M.S.Sonawane, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 14/08/2018

PER COURT :

1. This Court (Coram : V.K.Jadhav, J.) has passed the following order on 13/11/2017 while issuing notice :-

“ *Heard.*

2. *The learned counsel for petitioner submits that though the Petitioner came to be added as a Defendant in the suit by order below Exhibit 21 in Special Civil Suit No.23 of 2013 dated 19th October, 2015, the learned Judge of the Trial Court by order below Exh.41 has turned down the request of the petitioner to file the written statement for no justifiable reason. The applicant prevented from filing the written statement within time. The learned counsel submits that though the petitioner was added as defendant No.2 in the suit, considering his interest in the suit property, the very purpose of his presence in the suit could be defeated if his written statement is not accepted.*

3. *In view of the above, issue notice of final disposal to the*

Respondents, returnable on 8th January, 2018. Hamdast allowed."

2. I have heard the learned Advocates for the respective sides.

The following dates and events are undisputed :-

[a] The original plaintiff was granted leave to amend the plaint on 19/10/2015 for adding the petitioner as defendant No.2.

[b] The Court summons were served on the petitioner on 08/12/2015.

[c] "No W.S.order" was passed on 11/01/2016.

[d] On 09/08/2016, the application Exh.41, seeking leave to file the written statement, was filed by the petitioner.

[e] By the impugned order dated 19/09/2016, Exh.41 has been rejected by the Trial Court on the ground that the 90 days prescribed under Order I Rule 10 of the CPC have expired.

3. Learned Advocate for the original plaintiff has strenuously opposed this petition and prays for its dismissal with costs. In the alternative, it is submitted that heavy costs may be imposed and 50% of the costs be donated to the treatment of the poor patients, if this Court is inclined to entertain this petition.

4. Learned Advocate for respondent No.2/ original defendant No.1

submits that this petition brings up an issue which is in between the petitioner / defendant No.2 and the plaintiff.

5. It does appear from the record that after about 2 months from the date of appearance of the petitioner, the “No W.S. Order” was passed. He has ignored the proceedings for 7 months and has thereafter filed Exh.41.

6. While considering the above fact situation, it however, cannot be ignored that as the suit involves an immovable property in the form of an agricultural land, the petitioner would be rendered defenceless if the written statement is not taken on record. The delay caused is not inordinate so as to misuse the liberty to file a written statement. The rigours of the litigation suffered by the plaintiff could be reduced by imposing costs.

7. Considering the above, this petition is allowed. The impugned order dated 19/09/2016 is quashed and set aside and application Exh.41 is allowed subject to costs of Rs.10,000/- (Rs. Ten thousand only). By consent of the parties, the petitioner shall deposit an amount of Rs.5,000/- (Rs. Five 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 31/08/2018 and shall produce a receipt of the same before the Trial Court on or before 07/09/2018.

8. Similarly, an amount of Rs.5,000/- (Rs.Five thousand only) shall be deposited before the Trial Court on or before 31/08/2018, which can be withdrawn by the plaintiff without conditions.

(Ravindra V.Ghuge, J.)

Kranti Hansraj Shekatkar	Digitally signed by Kranti Hansraj Shekatkar Date: 2018.08.21 10:32:56 +0530
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