

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

WRIT PETITION NO. 13994 OF 2018

Madhav Saigonda Parsure
& others

... Petitioners

Versus

Sulochana w/o Gangadhar Kharbale
& others

... Respondents

Mrs. S.S. Kulkarni, Advocate holding for Mr. K.M. Nagarkar,
Advocate for the Petitioners.

Coram : N.M. Jamdar, J.

Date : 18 December 2018.

Oral Order :

1. By this petition, the petitioners have challenged the order passed by the learned Civil Judge, Senior Division, Biloli dated 19 October 2018 rejecting the application for setting aside 'no written statement' order.

2. The application which is filed for setting aside 'no written statement' order disclose details whatsoever. There is not a single date

mentioned in the application. The 'no written statement' order was passed on 9 June 2015. The application for restoration was filed on 10 May 2018. The only reason that is given is that the advocate engaged had expired and after the second advocate was engaged, he had informed that 'no written statement' order is passed and thereafter immediately the application for restoration is filed. When did the petitioners engage the second advocate is not stated. Nothing is stated as to what did the petitioners do during the period of three years in between. To faced with such a situation, the learned Civil Judge had to balance equity of the matter. The suit is pending since 2013. The learned Civil Judge accordingly took note of the complete lack of any kind of explanation and refused to set aside the 'no written statement' order.

3. Learned counsel for the petitioner submits that the petitioners are illiterate and they are not aware of any legal procedure. According to the petitioners, they have purchased the property. The suit summons were served and the petitioners were fully made aware that their sale-deed has been challenged. Any prudent purchaser would thereafter be vigilant about the proceedings. The petitioners do not live in penury but had the finances to purchase landed property. Even assuming that the Court has discretion in condoning

the delay, there must exist cogent reason. Not only the petitioners did not file the written statement in time, did not ask for extension and after 'no written statement' order was passed, approached the Court after three years. The argument now made across the bar is that petitioners are illiterate. It is belied by the fact that one of the petitioners has verified the petition by signing in English. In these circumstances, there being no ground whatsoever for setting aside 'no written statement' order, the discretion used by the learned Civil Judge cannot be faulted with. The Code of Civil Procedure is amended and amendments have brought in for speedy disposal of the suits. This legislative policy cannot be defeated by casually extending an indulgence where it does not deserve.

4. In these circumstances, no interference is warranted in the impugned order. Writ petition is accordingly rejected.

N.M. Jamdar, J.