

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

WRIT PETITION NO. 13887 OF 2017

NAWABBI BILAL BAGWAN AND OTHERS
VERSUS
YASMIN NASIR BAGWAN AND OTHERS

...

Advocate for the Petitioners : Shri Pathan Zafar M.

Advocate for Respondent 1 : Shri Latange V.P.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th June, 2018

Per Court:

1 The Petitioners are the original Defendant Nos.1, 3, 4, 7, 8 and 9 in RCS No.801/2014, who have suffered the orders dated 31.10.2017 by which, they have been prevented from filing their Written Statements.

2 I have considered the strenuous submissions of the learned Advocates for the respective sides. Respondent Nos.2 to 4 are the original Defendants and not contesting Respondents. Hence, this Court has not issued notices to them.

3 The learned Advocate for Respondent No.1/ original Plaintiff has strenuously defended the impugned orders and prays for the dismissal of this petition with heavy costs. Reliance is placed upon the judgment of

this Court in the matter of Sharma B.V. Coutinho vs. Andre Lourenco. Guilherme Fernandes and others, 2016(1) Bom. C.R. 32. The contention is that the Written Statement under Order 8 Rule 1 of the Code of Civil Procedure has to be necessarily filed within 30 days and an extension is permitted for the reasons which are acceptable. Beyond 90 days, the Written Statement cannot be accepted unless convincing reasons are cited.

4 He further submits that these Petitioners/ Defendants, though served with court notices on 12.02.2015, 23.02.2015, 20.03.2015 and 02.04.2015, did not prefer to file their Written Statements and as a consequence, the Trial Court has passed "no WS/ proceed ex-parte" orders.

5 Insofar as justifiable reasons are concerned, he adds that these Petitioners were contesting other issues before the Trial Court. An application under Order 10 of the Code of Civil Procedure was filed praying for staying the suit. The matters were carried upto this Court. Various applications and exhibits were being contested notwithstanding the fact that they were aware that "no WS/ proceed ex-parte" orders were passed against them. He, therefore, submits that this is a fit case for rejecting the Writ Petition and imposing heavy costs.

6 I find from the record that the litigating sides had reached this Court in Writ Petition Nos.243/2016 and 3441/2016. Under orders of this Court, the suit was stayed. These petitions were disposed of on 21.04.2017 and the stay was vacated.

7 In the above backdrop, Defendant Nos.1 and 8 filed the application Exhibit-47 and Defendant Nos.3, 4, 7 and 9 filed the application Exhibit-49 praying for recalling of the "No WS/ proceed ex-parte" orders. By the impugned orders, both these applications have been rejected.

8 The suit property is a house. Failure on the part of these Petitioners in filing their Written Statements would practically render them defenseless and they stand a chance of suffering adverse orders in relation to an immovable property. It requires no debate that misplaced sympathy ought not be shown towards any litigant. In this matter, if a strict view is taken by this Court and these Petitioners are prevented from filing their Written Statements, an irreparable loss would be caused. At the same time, the hardship caused to the Plaintiff need to be compensated by imposing costs so as to soften the rigours of litigation being suffered by him.

9 Considering the above, this Writ Petition is allowed. The impugned orders dated 31.10.2017 are quashed and set aside. The applications Exhibits 47 and 49 stand allowed with the following directions :-

- (a) Each of these Petitioners shall deposit an amount of Rs.3000/- (Rupees Three Thousand) before the Trial Court on or before 07.07.2018. If the above stated amount is not deposited, the

Trial Court would refuse permission for filing of their Written Statements and the suit would proceed from the stage at which it is today.

- (b) The Written Statements, if not already tendered before the Trial Court, would be filed on or before 07.07.2018 along with the documents as these Petitioners may desire to file.
- (c) The original Plaintiff would be at liberty to withdraw the entire costs, as are deposited by the Petitioners in the Trial Court in pursuance to this order, without conditions.
- (d) The Trial Court would refuse adjournments to the litigating sides in the said suit if they are found to be based on unreasonable or trivial ground.

kps

(RAVINDRA V. GHUGE, J.)