

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7636 OF 2018

Smt. Rekha Baburao Parmale & Ors. ... Petitioners
Vs.
Vishwabhashan Shrikant alias Annaso Patil & Ors. ... Respondents

Mr. Prajakt M. Arjunwadkar, Advocate for the petitioners.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **18th July, 2018.**

P.C.:

Upon mentioning, taken on production board.

2. This Petition is directed against the order dated the order dated 4th November, 2017 passed by the learned Civil Judge Senior Division, Sangli below Exhibit 26 in Special Civil Suit No. 1201 of 2013. The applications was made by the defendants to set aside No WS order passed against the defendant. The learned trial Court has allowed this Application. Hence, this Petition.

3. The learned counsel for petitioner has submitted that the defendants have move the Application under section 10 of the Code of Civil Procedure for stay of present suit and without the filing of the written statement, application under section 10 is disposed of.

4. The learned counsel for the petitioner submitted that the suit summons were served upon defendant nos. 1 and 2 on 5th August, 2014. They filed appeared through their advocate on 12th August, 2014. However, they did not file written statement. On 18th November, 2014 the Court passed No WS Order against the defendants. This order was in force when an Application under section 10 was filed and it was decided. The learned counsel submitted that there is a delay of 2 ½ years for setting aside No WS Order. This is an inordinate delay. He submitted that the reasons given for condonation of delay is not at all satisfactory. The learned counsel relied on paragraphs 5 and 6 of the impugned order and pointed out that the learned Judge has specifically mentioned that no satisfactory reason is given by the defendants in the Application for condonation of delay. The learned counsel has submitted that despite this reasoning, the learned Judge has erroneously set aside “No W.S.” order. Hence, the order dated 4th November, 2017 is to be set aside.

5. Perused the impugned order. Considered the submissions of the learned counsel for the petitioners and the time sequence given by the learned counsel. It is true that in paragraph 6 of the order, the

learned trial Judge has expressed that the defendants were not diligent in filing the written statement within the time limit and also was not happy with the reasons given by the defendants. The learned Judge has mentioned that however as the suit is for recovery of possession, the defendants are required to be given opportunity to defend their case in all fairness. In view of this clear reasoning, I am of the view that the trial Court has taken a correct approach. No interference is called for in the order dated 4th November, 2017 passed by the trial Court. Hence, Writ Petition is dismissed in limine.

(MRIDULA BHATKAR, J.)