

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5096 OF 2016

Pandharinath B. Dhumal & Anr.	...Petitioners
V/s.	
Dinkar A. Marathe & Ors.	...Respondents

Mr.Balasaheb R. Deshmukh for the Petitioners.

Mr.Rajesh S. Datar for the Respondent Nos.2, 3 and 4.

CORAM : R.D. DHANUKA, J.
DATE : 19TH OCTOBER, 2018.

P.C. :-

1. At the request of the learned counsel appearing for the petitioners, the name of the respondent no.8 is deleted in view of his demise. Leave to amend is granted. The amendment to be carried out forthwith. Re-verification is dispensed with.

2. By this petition filed under under Article 227 of the Constitution of India, the petitioners have impugned the order dated 22nd March, 2016 passed by the learned Trial Court below Exhibit – 39 rejecting the application filed by the petitioners (original defendant nos.1 and 2) for setting aside the order of “no W.S” dated 5th August, 2011. The suit was originally filed before the learned Civil Judge, Senior Division, Pune, which was subsequently transferred to the

learned Civil Judge, Junior Division, Bhore. Upon transfer of the said suit, the petitioners were issued a notice by the learned Civil Judge, Junior Division, Bhore some time in the month of October, 2014. Both the petitioners are senior citizens and are not keeping good health and thus could not make an application for setting aside the order of “no W.S.” within the reasonable period. The application for setting aside the order of “no W.S.” was filed on 21st August, 2013 and came to be rejected by the learned Trial Court on 22nd March, 2016. The petitioners filed this writ petition within less than 30 days. The petition however, remained pending before this Court. There was no *ad-interim* relief granted by this Court in this writ petition.

3. Learned counsel for the parties state that the suit is substantially argued by the petitioners.

4. However considering the age of the petitioners and the status of their health, I am inclined to take equitable view in the matter by giving an opportunity to the petitioners to file the written statement by setting aside the order of “No W.S.” on payment of reasonable costs.

5. I therefore, pass the following order :-

a). The impugned order dated 22nd March, 2016 passed by the learned Trial Judge below Exhibit – 39 is quashed and set aside. The Application (Exhibit – 39) filed by the petitioners is allowed. The

petitioners shall file the written statement within two weeks from today along with all the documents which they propose to rely upon and shall serve a copy thereof upon the respondents' advocate simultaneously. It is made clear that no further extension of time to file the written statement would be granted.

b). If the written statement along with the documents is not filed within two weeks from today, this writ petition to stand dismissed without further reference to the Court. The petitioners to pay Rs.10,000/- to the respondents within one week from today.

c). Learned Trial Court shall dispose of the suit expeditiously and shall not grant any unnecessary adjournments to any of the parties. If any of the parties do not co-operate with the learned Trial Judge in disposing of the suit expeditiously, the conduct of such parties shall be highlighted in the final order that may be passed by the learned Trial Court. The written statement shall be taken on record by the learned Trial Court, if the same is filed within the time prescribed and if the proof of payment of costs is produced by the petitioners before the learned Trial Court.

6. The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.

Vasant
Anandrao Idhol

Digitally signed by Vasant
Anandrao Idhol
Date: 2018.10.22 18:19:21 +0530

(R.D. DHANUKA, J.)