

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9 OF 2018

Ramesh Namdeo Jadhav

.. Petitioner

V/s.

Bajirao Shripati Jadhav

.. Respondent

Mr.M.S.Athalye for the petitioner

Mr.Nikhil Wadikar I/b Mr.N.V.Pawar for the respondent nos.1 to 3

CORAM: K.K. TATED, J

DATED : DECEMBER 4, 2018

P.C. :

1 Heard.

2 By this petition, under Article 227 of the Constitution of India, petitioner original defendant nos.1(a) to 1(d) challenge the order dated 23.02.2017 passed below Exhibit 88 in Regular Civil Suit No.51 of 2009 declining their request to adopt the written statement filed by their father deceased defendant no.1.

3 The learned counsel for the petitioner submits that they filed application before the Trial Court remitting them to adopt written statement filed by deceased father i.e. defendant in Regular Civil Suit No.51 of 2009. There was delay on their part to make application. He submits that Trial Court failed to

consider the fact that being legal heirs they have to collect the papers and proceeding and see whether they require to file additional written statement. After going through all the papers, they decided to adopt written statement filed by their father only. Hence, order passed by the Civil Judge, Junior Division, Koregaon is required to be set aside with permission to adopt written statement already filed by their father in Regular Civil Suit No.51 of 2009.

4 The learned counsel for the respondent original plaintiff vehemently opposed the present Writ Petition. He submits that Trial Court rightly rejected the petitioner's application below Exhibit 88 for want of explanation for delay of more than ten months. Hence, there is no question of allowing the present Writ Petition.

5 Heard both the sides.

6 It is to be noted that in application dated 23.02.2017 petitioner consistently stated that for want of relevant papers, it remained on their part to take appropriate steps.

7 Considering the reasons disclosed by the petitioner in their application dated 23.02.2017, I am of the opinion that petitioner has made out a case for allowing the Writ Petition.

8 Hence, following order is passed:

a) Order dated 23.02.2017 passed by Civil Judge, Junior

Division, Koregaon below Exhibit 88 in Regular Civil Suit No.51 of 2009 is set aside.

b) Application filed by the petitioner below Exhibit 88 for allowing them to adopt written statement filed by original defendant no.1 is allowed.

c) Writ Petition stands disposed of accordingly.

d) No order as to costs.

(K.K. TATED, J.)