

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

**WRIT PETITION NO. 11690 OF 2017**

Ashraf Haji Abdullah Amrelliwala & Ors. ... Petitioners  
V/s.  
Abdullah Abdul Latif Al-Othman Wakf & Ors. ... Respondents

- Mr.Imran Memon i/b. Mr.Shoaib I. Memon for the Petitioners.
- Mr.Chinmaya Acharya i/b. Mr.Y.M. Chandhari for Respondent No.7.
- Ms.Eventa A. Gonsalves a/w. Reyden Gonsalves for Respondent No.2.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 6<sup>th</sup> MARCH, 2018.**

**P.C. :**

1] Heard learned counsel for both the parties.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 29<sup>th</sup> June 2017 passed by the Civil Judge Senior Division, Satara, below Exhibit-75 in Regular Civil Suit No.308 of 2010.

3] The Application at Exhibit-75 was filed by the Petitioners, who are the Original Defendant Nos.4 to 6, for setting aside the order of “No W.S.” passed against them. The trial Court has, after giving

elaborate reasons, rejected the said application, finding that such application was filed about 6 years after the order of “No W.S.” was passed and when the suit was part heard. The trial Court noticed that, the only reason given by the Petitioners for setting aside “No W.S.” order was that the Advocate of the Petitioners had not informed them about the progress of the suit and thus, they are blaming their Advocate. The trial Court has therefore, relying upon the judgment of the Hon'ble Apex Court in the case of *Salem Advocate Bar Association Tamil Nadu V/s. Union of India, 2005(3) RCR (Civil) 530*, held that no extraordinary circumstances are made out to condone the delay and to set-aside the order of “No W.S.”.

4]           The perusal of the order passed by the trial Court therefore, makes it clear that no interference is warranted in the said order as the trial Court has given valid reasons for rejection of the application. However, only in the interest of substantive cause of justice, so that the matter can be decided on merits, the impugned order needs to be set-aside, and the Petitioners be permitted to file the written statement, subject to heavy costs of Rs.1,00,000/- (Rs. One Lac Only).

5]           The Writ Petition is accordingly allowed. The order of “No W.S.” passed against the Petitioners is set-aside, subject to payment of

the costs of Rs.1,00,000/- (Rs. One Lac Only) to the Respondents/Plaintiffs within two weeks from the receipt of the this order by the trial Court. The trial Court thereafter to decide the suit as expeditiously as possible. It is made clear that, in case of failure on the part of the Petitioners to comply with this order, the earlier order of “No W.S.” will stand restored, without further reference to this Court.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**