

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1322 OF 2011

Govind S/o. Vitthalrao Deshmukh
(Deceased through its LRs') & Ors. Petitioners

Versus

Bapu S/o. Govinda Yemale & Ors. Respondents

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Mr. P. R. Patil, Advocate h/f. Mr. E. G. Irale, Advocate for petitioners
Mr. D. A. Mane, Advocate h/f Mr. Milind Patil, Advocate for
respondents No. 1/1 to 1/5 and 1/7 to 1/10.

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CORAM : RAVINDRA V. GHUGE, J.
DATED : 19TH SEPTEMBER, 2019

PER COURT:-

1. The petitioners are the LRs' of defendant Nos. 1, 2 and 3 in R.C.S. No. 96/1976.

2. These petitioners are aggrieved by the order dt. 07.01.2011, by which the trial Court rejected their application Exh. 205, seeking leave to file a written statement in their capacity as LRs. Original defendant Nos. 1 to 3 have passed away in 1991 and they have filed their written statement in 1977.

3. I have considered the submissions of the learned advocates for the respective sides. Respondent Nos. 1/9 and 1/10, though served, have not caused an appearance in the matter.

4. This Court (Coram : B. P. Dharmadhikari, J.) had passed an order on 03.03.2011, in this petition and while issuing notice for final disposal, the proceedings before the trial Court were stayed. It is not in dispute that the proceedings before the trial Court are 43 years old, as on date.

5. The learned advocate for the respondents has strenuously opposed this petition. He submits that, after the original defendant Nos. 1 to 3 had filed their written statement in 1977, they had sought an amendment to the written statement. The said amendment was granted by the trial Court vide order dt. 03.05.1990 and application Exh. 63 was allowed. The original plaintiffs approached this Court in Civil Revision Application No. 848/90. By judgment dt. 24.02.1999, this Court allowed the Civil Revision Application on the ground that the original defendants had delayed the matter and conflicting stands were being taken.

6. Learned advocate for the plaintiffs therefore submits that, after the C.R.A. was allowed on 24.02.1999, the LRs of the deceased/defendant Nos. 1, 2 and 3 did not choose to file their written statement. Application Exh. 205 was filed on 07.01.2010 and by the impugned order dt. 07.01.2011, Exh. 205 was rejected.

7. There cannot be any dispute that, the LR's of the original defendants can file a written statement notwithstanding that the deceased/defendants had filed their own written statement. In this backdrop, the right of the LR's to file a written statement is well recognized.

8. The issue before this court is that, the trial Court has rejected application Exh. 205 on the ground of delay. Immovable properties are involved in the suit. These LR's of the original defendants are presently participating in the suit without filing their own written statement and are, therefore, banking upon the written statement filed by the deceased/defendants.

9. The record at this stage clearly reveals that, these defendants will virtually be rendered defenceless to the extent of their case notwithstanding that the deceased/defendants had filed the written statement. No doubt, the petitioners were negligent in not taking effective steps though this court had allowed the CRA on 24.02.1999, which would clearly give these petitioners an idea that they are required to file their written statement.

10. In the above backdrop, I called upon the learned advocate for the respondents to respond as to whether heavy costs could be

imposed on these petitioners and the written statement could be permitted by imposing a specific time frame with a specific schedule for the early decision and disposal of the suit, which was filed in 1976. Learned advocate for the respondents submits, on instructions, that, if heavy costs are imposed and if a specific time table is directed for the disposal of the suit, the respondents would be agreeable for allowing the LR's, who had prayed for filing their written statement vide Exh. 205.

11. It is in the light of the above that this petition is partly allowed. The impugned order dt. 07.01.2011 is quashed and set aside and application Exh. 205 is allowed subject to the following directions : -

[a] The LR's of the deceased/defendants No. 1 to 3 shall deposit an amount of Rs. 30,000/- (Rupees Thirty Thousand) before the trial Court on 04.10.2019. Not a single day enlargement of time shall be granted and if the entire amount of Rs. 30,000/- is not deposited, these LR's shall be precluded from filing their written statement.

[b] After the amount is deposited, the plaintiffs are at liberty to withdraw the said amount from the trial court in equal proportions and without any conditions.

- [c] Since the written statement is commonly filed by the LRs' of the deceased/defendant Nos. 1 to 3 along with the application Exh. 205, the same shall be taken on record pursuant to depositing the amount in the court.
- [d] In the event, the plaintiffs desire to lead additional evidence in view of the above supplementary written statement, they would be at liberty to do so.
- [e] After the plaintiffs conclude their recording of oral evidence, the LRs' of original defendant Nos. 1 to 3 shall lead their oral evidence and conclude the recording of such oral evidence within a period of 45 days from the date on which the plaintiffs close their oral evidence. Not a single day adjournment shall be granted by the trial Court and keeping in view that the suit is of 1976, the trial Court shall proceed with this suit with utmost urgency and on day to day basis, if necessary.
- [f] After the recording of oral evidence is concluded, the litigating sides would advance their arguments within thirty (30) days.
- [g] After the oral arguments of the litigating sides have concluded in view of the above directions, the trial court would endeavour to decide R.C.S. No. 36/1976, as expeditiously as possible and shall deliver its judgment within 45 days from the date of the conclusion of the oral submissions.

12. The petitioners shall note that, it is in exceptional circumstances as recorded above that this petition is partly allowed and any attempt to delay the matter would be considered with seriousness and the trial court would be at liberty to proceed with the suit by rejecting applications for seeking adjournment.

[RAVINDRA V. GHUGE]
JUDGE

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