

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 2802 OF 2014

Harihar s/o Suryakant Alsatwar,
Age 40 years, Occu: L.I.C. Agent,
R/o Saraswati Colony, Basmath,
District Hingoli.

... PETITIONER
(Orig. Defendant)

VERSUS

1. Kamalbai w/o Pandurang Atimpamuplu,
Age 58 years, Occu: Household,
R/o Bungalow No.5, Om Akankasha
Housing Society, Plot No.36, Sy.No.23/24,
N-4, CIDCO, Aurangabad.

... Orig. Plaintiff

2. Saraswatibai w/o Suryakant Alsatwar,
Age 57 years, Occu: Household,

3. Omprakash s/o Suryakantrao Alsatwar,
Age: 40, Occu: Agril.

4. Vithleshwar s/o Suryakant Alsatwar,
Age 34 years, Occu: Agril.,
All 2 to 4 R/o Korba Galli, Bhainsa,
Tq. Mudhol, District Adilabad (A.P.).

5. Gangubai d/o Venkatrao Alsatwar,
Age 56, Occ: Agril,
R/ Manglwar Peth, Basmath,
District Hingoli.

6. Shashikant s/o Venkatrao Alsatwar,
Age 46 years, Occu: Agril,
R/o Mangalar Peth, Basmath,
District Hingoli.

7. Kusumbai w/o Gangadhar Sabbanwar,
Age 54 yeas, Occu: Household,
R/o Kondalwadi, Tq. Biloli,
District Nanded.
8. Chandrakant s/o Venkatrao Alsatwar,
Age 49 years, Occ: Servide, Dy.S.P.,
Office of S.D.P.O. Selu, Tq. Selu,
District Parbhani.

... **RESPONDENTS**
(Orig. Defendants)

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Mr. Yuwaraj R. Barahate, Advocate for Petitioner.

Mr. S. S. Londhe, Advocate for Respondent No.1.

Mr. H. V. Patil, Advocate for Respondent Nos.6, 7 & 8.

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CORAM : **T. V. NALAWADE, J.**

DATE : 13th February, 2019.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The petition is filed by one of the Defendants to challenge the order made on Exhibit-23 in Regular Civil Suit No.48 of 2012, presently pending in the Court of learned Civil Judge Senior Division, Basmath. The said application was filed by the present Petitioner for setting aside "No W.S. order" and for granting permission to file W.S. The suit is filed by Respondent No.1 of the present proceeding for

partition. The submissions made show that though this Court has not granted stay to the proceeding itself, the Trial Court did not proceed with the matter due to pendency of the present petition.

3 The learned counsel for Petitioner, one of the Defendant placed reliance on the observations made by the Apex Court in **Appeal (Civil) No.2925 of 2017**, (*M/s. R. N. Jadi & Brothers and Ors. Vs. Subhashchandra*). The Apex Court has made it clear that the provision of Order VIII Rule 1 of the Code of Civil Procedure fixing the time limit for filing W.S. is directory in nature and in extraordinary circumstances, the Court can use discretion and allow the party to file W.S. even after the period of 90 days. Considering the possibility that the present Petitioner, one brother of the Plaintiff may have defence separate from other brothers and the circumstance that these brothers were also contesting suit filed by their sister for partition, this Court is allowing the Petitioner, Defendant to file W.S. subject to some costs. However, it cannot be ignored that the suit filed in the year 2012 is kept pending due to pendency of the petition in this Court and due to that the Plaintiff could not get share if she is entitled to get the share in the property. In the result, the following order is passed:

ORDER

- I. The petition is allowed.
- II. The order of Trial Court is set aside. The application filed for setting aside the “No W.S. order” is allowed. The order of “No W.S.” is set aside. Permission is granted to file W.S. It should be filed within 15 days from today and if it is not filed, the original order of “No W.S.” shall stand restored.
- III. This order will be subject to payment of costs of Rs.5,000/- by the present Petitioner to the original Plaintiff.
- IV. The amount deposited in this Court of Rs.5,000/- is to be given to the Plaintiff by account payee cheque to be drawn in her name.
- V. The Trial Court is to expedite the suit and it needs to be decided within six months from today.
- VI. Rule is made absolute in those terms.

[T. V. NALAWADE, J.]