

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

14 WRIT PETITION NO.3144 OF 2012

HARISHCHANDRA GANGARAM HULGUNDE AND ORS
VERSUS
SHIVAJI KISHANRAO PATIL AND ORS

...
Advocate for Petitioners : Mr. H.B. Nandagavale h/f Mr. Sakolkar
Vijay G.
Advocate for Respondent Nos.1 to 5, 7 & 8 : Mr. R.P. Adgaonkar
...

CORAM : V. K. JADHAV, J.
DATED : 25th NOVEMBER, 2019

PER COURT :-

1. The petitioners are the original defendants in Regular Civil Suit No.392 of 2008. The respondents - original plaintiffs have instituted the said suit for decree of perpetual injunction. The learned Judge of the trial Court has decreed the suit *ex-parte* and thus being aggrieved by the same, the present petitioners - original defendants have preferred Regular Civil Appeal No.189 of 2009. The learned District Judge-1, Latur, by judgment and order dated 31.01.2012, partly allowed the said Regular Civil Appeal No.189 of 2009, quashed and set aside the *ex-parte* decree passed by the trial Court and remanded the matter to the trial Court for fresh hearing with certain directions including and permitting thereby the present petitioners to file written statement up to 05.03.2012 and further directed the trial Court to decide the matter on merits within six months from the date of this order.

2. The petitioners - original defendants in the said restored Regular Civil Suit filed an application Exhibit-35 on 05.03.2012 for extension of time. However, the learned Judge of the trial Court by order dated 05.03.2012 below Exhibit-35 in RCS No.392 of 2008, rejected the said application. It further appears that on 06.03.2012, the petitioners - defendants have filed their written statement before the trial Court alongwith an application Exhibit-36 for condonation of delay of one day in filing the written statement as directed in the remand order by District Court. Even though their application Exhibit-35 came to be rejected on 05.03.2012, learned Joint Civil Judge, Junior Division by impugned order dated 09.03.2012 below Exhibit-36 rejected the said application. Hence this writ petition.

3. Though the appellate court has quashed and set aside *ex-parte* judgment and decree passed in favour of the respondents - plaintiffs, further directed the present petitioners - defendants to file written statement up to 05.03.2012, however there is only one day delay in filing the written statement and despite the application filed by the petitioners - defendants for extension of time in filing the written statement, the trial Court has rejected the same by passing an order below Exhibit-35. It is true that the trial Court is bound by the orders and the directions given by the appellate court while remanding the matter, however, for the said one day delay the matter is now taken up for hearing in the year 2019.

4. In view of the same, since the petitioners - defendants have already filed the written statement, I am inclined to allow this writ petition with further directions to the trial Court to dispose of the suit as expeditiously as possible on priority basis within a period of six months from the date of this order. Hence the following order:

ORDER

- a) The Writ Petition is hereby allowed.
- b) The impugned order dated 05.03.2012 below Exhibit-35 and order dated 09.03.2012 below Exhibit-36 in R.C.S. No.392 of 2008 passed by the Joint Civil Judge, Junior Division, Latur are hereby quashed and set aside.
- c) The applications Exhibit-35 and Exhibit-36 are allowed in terms of its prayer clause.
- d) The trial court is hereby directed to dispose of the suit as expeditiously as possible on priority basis within a period of three months from the date of this order.
- e) The writ petition is accordingly disposed off.

(V. K. JADHAV, J.)