

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4979 OF 2019

**DAIVSHALA NAGNATHRAO SHENDGE
VERSUS
MAHIPATI MANIKRAO SHENDGE AND OTHERS**

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Advocate for the Petitioner : Shri H. V. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 24th JUNE, 2019.

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PER COURT :

1. The petitioner/original defendant No. 7 in Special Civil Suit No. 18/2006, is aggrieved by the order dated 22/08/2008 passed by the Trial Court, by which, the suit proceeded exparte against defendant No.7. She is also aggrieved by the order dated 11/03/2019, by which, her application Exhibit 181 has been rejected.

2. I have heard the strenuous submissions of the learned Advocate for the petitioner/defendant No. 7 who has drawn my attention to the ten grounds formulated in the memo of the petition. He has made a valiant attempt to convince me to condone the delay of eleven years and pass an order of

vacating the "proceed exparte" order.

3. Considering the strenuous submissions of the learned Advocate for the petitioner, I have gone through the petition paper book with his assistance. The record reveals that Court summons issued in the suit were attempted to be served on defendant No.7, who refused to accept the same. Her husband is defendant No.4 who is party to the suit. The husband duly participates in the suit which is still pending. The Trial Court passed the "proceed exparte" order on 22/08/2008. Thereafter the suit has proceeded and the evidence of the plaintiff side is concluded. It was on 04/02/2019 that the petitioner/defendant No. 7 filed an application Exhibit 181 praying for vacating the "proceed exparte" order, after 11 years.

4. The record also reveals that defendant Nos. 1 to 6 had filed an application in September 2010 praying for leave to tender their written statements. The Trial Court has permitted the said defendants to file their written statement. Even at that juncture, the petitioner did not join the six defendants out

of whom her husband defendant No.4 had also sought leave to file a written statement after four years of the pendency of the suit.

5. I find from application Exhibit 181 that it is a single paragraph application praying for leave to file the written statement of defendant No. 7 and for recalling the order dated 22/08/2008. Besides stating that the property Gat No. 235 sought to be placed in the common hotch potch by the plaintiff alleging it to be a part of ancestral property, is actually the property belonging to the mother of defendant No. 7, who entered the family as a daughter in law after her marriage with defendant No.4. There is not a single reason assigned in Exhibit 181 as to why defendant No. 7 could not file her written statement for ten years and six months. There is no reason mentioned which could have convinced the Trial Court to recall the order dated 22/08/2008 and allow defendant No. 7 to file her written statement in 2019.

6. I am aware of the law laid down by the Honourable Apex Court in the matters of *Collector, Land Acquisition*,

Anantnag v/s. Katiji, AIR 1987 SC 1353 and Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649. However, as not a single reason has been assigned to convince the Court to condone the delay of ten years and six months, I am unable to hold that the impugned order passed by the Trial Court could be termed as being perverse or erroneous.

7. The Code of Civil Procedure has undergone an amendment in 2002. *Insofar* as, filing of written statement is concerned, it is provided that such a written statement should be filed within 30 days and for reasons which are justified and convincing, such a written statement could be filed within a maximum period of 90 days.

8. Considering the above, this petition, being devoid of merit is, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-