

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10011 OF 2018

RUPCHAND PARASRAM RATHOD AND OTHERS
VERSUS
KAUSHALYABAI SITARAM RATHOD

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Advocate for Petitioners : Shri Vaidya Ameet R.
Advocate for Respondent : Shri Deshmukh R.S. h/f Shri Thombre B.V.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: January 21, 2019

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PER COURT :-

1. The petitioners are original defendants 3 to 5 in RCS No.563 of 2016. They failed to file their written statement. The trial Court passed the 'No Written Statement' order on 5.11.2016. An application Exhibit 50 was filed on 13.3.2018, praying for recalling of the 'No Written Statement' order. By order dated 9.4.2018, Exhibit 50 was rejected.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. Shri Deshmukh, learned Advocate appearing on behalf of the original plaintiff has drawn my attention to the detailed affidavit-in-reply filed to this petition. He specifically points out the dates and events set out below paragraph No.13 and contends that this petition should be dismissed with heavy costs. In the alternative, he submits, on instructions, that the petitioners should be directed to pay heavy costs and should be further directed to refrain

from seeking unnecessary adjournments in the trial of the suit.

3. I find that these petitioners appeared on service of summons on 16.7.2016. The suit was filed on 5.7.2016. Adjournments to file written statement were sought on 16.7.2016 and 4.8.2016. The 'No Written Statement' order was passed on 5.11.2016. Exhibit 50 was filed by the petitioners on 9.4.2018, when the plaintiff had already entered her affidavit in lieu of examination-in-chief.

4. It surely appears from the record that these petitioners were negligent and probably appeared to be comfortable in delaying the suit. The plaintiff is a lady, who is about 60 years of age. At her age, delay in the trial of the suit would have a serious impact and she cannot be compared with a young litigant when it comes to the postponement of hearing in her matter. At the same time, it cannot be ignored that an agricultural land is at an issue in the suit and a decision in the suit, without a contest on behalf of these petitioners, would cause an irreparable harm and serious prejudice to them if the suit is decreed.

5. Considering the balance of convenience and being a Court of equity, I find that an amount of Rs.30,000/- by the three petitioners, together, would soften the rigours of litigation being suffered by the plaintiff. Learned Advocate for the petitioners submits, on instructions,

that the said costs would be deposited before the trial Court on/or before 5.3.2019. It is further submitted, on instructions, that the suit may proceed by taking into account the written statement of the petitioners and if the amount is not deposited on 5.3.2019, the defence of these petitioners can be struck off and they will not raise any grievance about the said order.

6. In view of the above, this petition is allowed. The impugned order dated 9.4.2018 is quashed and set aside and application Exhibit 50 is allowed by recording the statements of the petitioners and on the following conditions:-

(A) These three petitioners shall deposit a total amount of Rs.30,000/- before the trial Court on/or before 5.3.2019.

(B) The Written Statement already placed on record be accepted by the trial Court forthwith and additional issues, if deemed appropriate, can be framed by the trial Court within four weeks from today.

(C) An affidavit by way of additional evidence may be entered by the plaintiff after the framing of additional issues and thereafter, her cross-examination would commence.

(D) If the costs are not deposited by 5.3.2019, the defence of these petitioners shall be struck off by the trial Court on 6.3.2019.

(E) After the amount is deposited, the plaintiff would withdraw the said amount without conditions, as costs.

(RAVINDRA V. GHUGE, J.)

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