

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10557 OF 2015

NARAYAN UTTAM MATKAR AND ANOTHERS
VERSUS
SUMANBAI NARAYAN MATKAR

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Advocate for Petitioners : Shri Imale Ramesh R.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 01, 2019

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PER COURT :-

1. The sole respondent has been served in March, 2016. No reply has been filed. None is present today for respondent.
2. The petitioners are the original defendants in RCS No.130 of 2013. On 1.11.2014, they sought time to file their written statement. However, the trial Court noted that the suit was filed in 2013 and written statement is not filed and hence ordered that the suit should proceed without written statement, as against petitioner No.1. A similar order was passed on 4.2.2015 against petitioner No.2.
3. The petitioners preferred an application on 1.4.2015 praying for leave to file the written statement. The trial Court has passed an order on 15.6.2015, noting that six months have lapsed and therefore, no good reason was shown so as to allow the application.

The same has been rejected by the impugned order dated 15.6.2015.

4. I find from the record that the plaintiff has preferred the suit for seeking partition and separate possession of the agricultural land. The rights of the defendant involved in the suit are in connection with such immovable property. They would be rendered defenseless if the written statement is not permitted to be filed. No doubt, the progress of the suit has been stalled on account of the failure of the petitioners in filing their written statement. The plaintiff can, therefore, be compensated by imposition of costs.

5. It is in the light of the above, that this petition is allowed. The impugned order dated 15.6.2015 is quashed and set aside and the application dated 1.4.2015 Exhibit 19 is allowed with the following conditions:-

(A) Both the petitioners shall deposit an amount of Rs.5,000/- each before the trial Court on/or before 20.7.2019.

(B) The plaintiff shall withdraw the entire amount as costs without conditions.

(C) The trial Court shall accept the written statement of the petitioners.

(D) If the direction to deposit costs is not complied with, this order shall stand recalled and the impugned order shall stand restored on 22.7.2019, without reference to the Court.

(RAVINDRA V. GHUGE, J.)

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