

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**982 APEAL FROM ORDER NO.40 OF 2019
WITH CA/8676/2019 IN AO/40/2019**

NARAYAN BABURAO LIMBUTKAR
VERSUS
RAMESHWAR BABURAO LIMBUTKAR

...
Advocate for Petitioner : Mr. Gujrathi Pushpak U.

...
CORAM : **RAVINDRA V. GHUGE, J.**

Date: July 26, 2019

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PER COURT :-

1 The appellant (original Plaintiff) is aggrieved by the Judgment & Order dated 29.3.2010 delivered by the first Appellate Court, by which RCA No.1/2016 filed by the original defendants, has been allowed.

The Judgment & decree dated 20.11.2013 delivered by the Trial Court in RCS No.202/2008 has been set aside, on the ground that, the Appellants (defendants) had not filed their Written Statement and the Suit had proceeded without any contest. The suit is, therefore, remanded to the Trial Court to enable the defendants to file their written statement and lead evidence.

2 The learned advocate for the appellant has strenuously criticized the impugned judgment. My attention is drawn to the 16 grounds, formulated in the memo of petition. It is vehemently submitted that, the defendants were negligent and careless and

allowed the suit of 2008 to proceed without their written statement, till it was decided on 30.11.2013. No sympathy deserves to be shown to them. An irreparable harm has been caused to the appellant by the impugned Judgment. Despite service of Court notice, the defendants had chosen not to participate in the proceedings.

3 It does appear from the record that the original defendants have acted negligently. I, however, do not find a conclusion by the Appellate Court, by which it can be said that laches are attributable to their conduct. The appellate Court has not concluded that they had deliberately kept away from the proceedings for ulterior or oblique motives. The Appellate Court has imposed costs of Rs.5,000/- on the defendants and directed the filing of the written statement, within one month and to lead evidence. The hearing of the suit has been expedited.

4 I find that the impugned order is an equitable order. Immovable properties are at issue. The defendants were practically rendered defenseless without their written statement, though it was their own creation. The Appellate Court, has, therefore, imposed costs of Rs.5,000/- and expedited the Suit.

5 Since I do not find that the impugned order can be termed as being perverse or erroneous or likely to cause injustice to the

appellant - the original Plaintiff and since it is an equitable order, no interference is called for.

6 The Appeal From Order No.40/2019 is dismissed.

7 The Civil Application does not survive and stands dismissed.

(RAVINDRA V. GHUGE, J)

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