

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

926 WRIT PETITION NO.8839 OF 2016

**LAXMAN RAMKRUSHNA PATIL AND OTHERS
VERSUS
MANISHA PRAKASH PATIL AND ANOTHER**

...

**Advocate for Petitioners : Mr. Surwase B.R.
Respondent Nos.1 & 2 served**

**CORAM : P.R. BORA, J.
DATED : 3rd July, 2019.**

PER COURT:-

1. Though respondents are duly served, none of them has caused appearance in the matter. Respondent No.2 is minor daughter of Respondent No.1. As such, appearance was required to be caused by respondent No.1; however, she has not caused appearance though she has been duly served.

2. Petitioners have challenged order passed by learned Civil Judge, Junior Division, Pachora on 14.3.2016 passed below Exh.14 in RCS No.126/2014. The aforesaid application was filed by the petitioners with a prayer to set aside 'No WS' order passed against them in the aforesaid suit and take on record written statement of the said respondents. The aforesaid application has been

rejected by the trial court with following order, -

"Perused the application. Say at Exh.16. Heard. summons to these defts. No. 1 and 2 vide summons Exh. 7 and report there with shows that it is served on 30.10.2014. Vakild Patra filed by these defts. Vide Exh. 8 on 12.12.2014, order of No W.S. was passed on 3.3.20154 on plaint Exh. 1. No sufficient reason in this application. Even W.S. of these defts. Is not appended with this application. Delay is not properly explained. Hence, this application is rejected."

3. A copy of the application preferred by the petitioners before the trial court with the prayer to set aside 'No WS' order is placed on record. In the said application, sufficient reasons are assigned by the petitioners for not submitting the written statement within the stipulated period. The learned trial court, while rejecting the application, has not considered the merits of the reasons as are assigned by the petitioners in the application at Exh.14. The learned trial court has made the observation that no sufficient reasons stated in the application.

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The learned Trial Judge has also observed that WS was not appended to the application.

4. Shri Surwase, learned counsel appearing for petitioners, submitted that the written statement was appended with the application preferred by the petitioners for setting aside 'No WS order' which was passed against them.

5. If the averments in the application at Exh.14 are perused and more particular if the prayer clause is read, it clearly demonstrate that the defendants, i.e. present petitioners, have annexed the written statement along with their application submitted with prayer to set aside 'No WS order' passed against them. It seems that the said fact has been missed or overlooked by the learned Trial Judge. No WS order was passed on 3rd March, 2015. The application for setting aside 'No WS order' was preferred on 10th April, 2015, i.e. within the period of 35 days.

6. On perusal of the application, it is difficult to accept the finding recorded by the

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trial court that there was no reason stated in the application in justification of the delay caused. Similarly, though the learned trial judge has observed that the WS was not filed along with the said application, the record shows otherwise. In the circumstances, and more particularly, with a view to give due opportunity to the defendants to agitate their matters on merits, I am inclined to allow the present writ petition. Hence, the following order, -

ORDER

- i. The impugned order dated 14th March, 2016 is set aside.
- ii. The application filed by the present petitioners at Exh.14, is allowed subject to costs of Rs.1,000/- to be deposited by the petitioners before the trial court.
- iii. The Written statement of the present petitioners be taken on record.
- iv. The writ petition stands allowed in the aforesaid terms.

(P.R. BORA)
JUDGE