

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13133 OF 2018

RUKMINIBAI SUDAM SONKAMBLE AND OTHERS
VERSUS
MARUTI DHARMA SONKAMBLE KAMBLE

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Advocate for Petitioners : Shri Kore Ganesh J.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: January 03, 2019

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PER COURT :-

1. This Court had permitted the petitioners to serve the respondents and had directed them to deposit an amount of Rs.2,000/- in this Court.
2. The service affidavit, along with the original Speed Post receipt dated 14.12.2018 and a copy of the tracking report, is placed on record to indicate that the respondent has been served. The amount of Rs.2,000/- is also deposited in this Court.
3. The service affidavit, original receipt and the tracking report are taken on record and collectively marked as Exhibit "X" for identification.
4. The record reveals that 'No Written Statement' order was passed against the petitioners on 17.3.2017 in RCS No. 34 of 2015. The application Exhibit 22 praying for recalling the 'No Written Statement'

order was allowed by the trial Court on 20.12.2017 with the direction to deposit costs of Rs.200/-. Since the said amount was not deposited and application Exhibit 24 was filed belatedly, that the trial Court rejected Exhibit 24 by order dated 22.1.2018. This petition has been subsequently filed on 30.7.2018.

5. It is, therefore, apparent that the petitioners have failed in complying with the earlier directions of the trial Court, dated 20.12.2017 and consequentially, further orders have been passed.

6. It, however, cannot be ignored that the issue before the trial Court is with regard to the claim of the respondent / plaintiff seeking a declaration of ownership and injunction with regard to an immovable property. It would not be in the interest of justice to prevent the petitioners from filing their written statements. The written statement is filed before the trial Court, along with Exhibit 22, as per the statement of the petitioners.

7. In view of the above and considering that the plaintiff has not appeared in this matter, pursuant to the leave to serve the plaintiff was granted by order dated 30.11.2018, this petition is allowed. The order dated 22.1.2018 is set aside and application Exhibit 24 is allowed. The amount deposited by the petitioners in this Court could have been

granted as costs to the plaintiff. However, since the plaintiff has not appeared in this proceedings, the said amount shall stand donated for the treatment of poor patients to the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad.** Registry to take suitable steps for transferring the said amount.

(RAVINDRA V. GHUGE, J.)

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