

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7974 OF 2006

Shivaji Bhikaji Gite,
Age-68 years, Occu-Agriculture,
R/o Wadgaon-Gupta, Taluka and
District Ahmednagar

-- PETITIONER

VERSUS

Sakharam s/o Tukaram Gite,
Age-60 years, Occu-Agriculture,
R/o Nimblak-Shivar Villadghat,
Taluka and Dist.Ahmednagar

-- RESPONDENT

Mrs.M.G.Kasturkar h/f Mrs.M.A.Kulkarni, Advocate for the
petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 25/01/2019

ORAL JUDGMENT :

1. Despite service of Court notice initially at the admission stage and after issuance of Rule as well, none has appeared for the respondent.

2. This Court (Coram : B.R.Gavai, J.) has granted interim relief to the petitioner and has stayed RCS No.622/2013.

3. I have heard the learned Advocate for the petitioner.

4. The impugned order is dated 10/11/2006 by which the Trial Court rejected application Exh.25 filed by the petitioner/ defendant praying for permission to file the written statement.

5. I find that the petitioner appeared before the Trial Court on 16/04/2005 and also submitted that certain documents annexed to the plaint were not served on him. From 16/08/2005 to 22/10/2005, the Trial Court was on leave. The petitioner being an aged person, 68 years as in 2006, engaged an Advocate and filed his written statement on 24/02/2006. On 21/03/2006, he filed Exh.25 praying for recalling of the order of rejection passed on his written statement at Exh.24.

6. It is settled law that if a litigant has not caused an inordinate delay and if laches and oblique motives are not attributable, a pragmatic view needs to be taken in permitting the filing of the written statement. It also needs to be kept in mind that a litigant is practically rendered defenceless without a written statement.

7. Considering the law laid down in the judgments delivered by the Hon'ble Apex Court in Collector, Land Acquisition Anantnag and

another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649], this petition is allowed. The impugned order dated 10/11/2006 is quashed and set aside and application Exh.25 is allowed by imposing costs of Rs.1,000/-.

8. As the respondent has not appeared in the matter, the amount of Rs.1,000/- shall be deposited with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti**”) on or before 08/02/2019 and the receipt of such deposit shall be tendered before the Trial Court on 15/02/2019.

9. The petitioner shall appear before the Trial Court on 15/02/2019 and shall tender a copy of this order obtained from the official website of the Bombay High Court. If the respondent / original plaintiff does not appear on the said date, fresh notice can be issued by the Trial Court to enable his appearance.

10. Rule is made absolute in the above terms.

11. Considering that the suit is 16 years old, the same is expedited and the Trial Court would decide the said suit on or before 29/02/2020.

(Ravindra V.Ghuge, J.)