

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11984 OF 2017

Sou. Jayshri Kamlakar Choudhari
& another

Petitioners

Versus

Yogeshri Vishwasrao Patil
& others

Respondents

Mr. A.V. Patil, Advocate for the petitioners.
Mr. H.P. Jadhav, Advocate for the respondents.

WITH
CIVIL APPLICATION NO. 5370 OF 2019

Yogeshri Vishwasrao Patil
& others

Applicants

Versus

Sau. Jayshree Kamlakar Chaudhari
& another

Respondents

Mr. H.P. Jadhav, Advocate for the applicants.
Mr. A.V. Patil, Advocate for the respondents.

CORAM : Ravindra V.Ghuge, J.

DATE : 05/07/2019

PER COURT :

1 Since the learned advocates for the respective parties
were willing to work out the petition itself, the civil application is

disposed off by their consent.

2 On 03.10.2017, I had passed the following order :-

1. The petitioners/defendants 9 and 10, are aggrieved by the order dated 11.4.2017, by which, the trial Court has rejected application Exhibit 48 and refused leave for filing the Written Statement and consequentially has not vacated the 'No Written Statement' order, passed on 11.12.2009.

2. The petitioners were served with summons in RCS No. 8 of 2009 (New No. 11 of 2012), in 2009. Though the 'No Written Statement' order was passed on 11.12.2009, Exhibit 48 was filed by the petitioners on 21.9.2016, which is after 7 years and 10 months. the trial Court has rejected Exhibit 48 on the ground that there is an inordinate delay in not filing the Written Statement.

3. Shri Patil strenuously submits that an immovable agricultural property is the subject matter of the suit and the petitioners would be rendered defenseless. There are five plaintiffs in the matter.

4. Issue notice before admission to the respondent, returnable on 24.11.2017. On the condition that each of the petitioners would deposit an amount of Rs.25,000/- before the trial Court on/or before 31.10.2017, the trial Court would adjourn RCS No. 11 of 2012 (Old No. 8 of 2009). There shall be no extension of time for depositing the amount. if the petitioners fail to deposit the amount, the trial Court shall proceed with the suit from 1.11.2017.

5. The petitioners shall file copies of the petition paper book for issuance of notice on/or before 11.10.2017, failing which, this petition shall stand dismissed without reference to the Court on 12.10.2017.

3 Shri Patil further submits that these two petitioners are now 62 and 67 years of age. They are litigating against young persons who are less than 36 years of age. The respondents are the original plaintiffs. The petitioners-defendants had purchased only 2 acres of land, which is a part of the suit property, from defendant no. 7. The Plaintiffs contend that defendant no. 7 did not have a right to sell the said two acres of land.

4 Shri Patil further submits that the petitioners had relied upon their advocate and considering their old age, they were at the mercy of the advocate. Though the Vakilpatra was filed on 29.09.2009, the written statement could not be filed. Certain documents and revenue records were also to be searched. This led to the passing of 'No Written Statement' order on 11.12.2009. After the relevant documents were collected by digging into the old records, the petitioners prepared their written statement and moved application Exhibit 48 on 21.09.2016. The said application was rejected by the impugned order dated 11.04.2017.

5 The learned advocate for respondents-plaintiffs has vehemently opposed this petition and has prayed that it should be dismissed with heavy costs. He submits that the members of the joint family are litigating for partition and separate possession. Petitioners - defendants no. 9 and 10, who are outsiders, have been arrayed in the suit as they have purchased 2 acres of land. On account of the delay caused by them, the suit has got prolonged. It was originally filed in the year 2009 and has been re-numbered in 2012.

6 In the alternative, he submits that though cost of Rs.50,000/- has been imposed on both the petitioners (Rs. 25,000/- each), this Court may enhance the cost. The learned advocate for the petitioners submits that Marathwada region has been reeling under a drought for the past few years. The rains in 2018 have been bad and are reported to be 27% of the rainfall expected. As it is, this region has been in the rain shadow and the rains have been bad. The farmers are suffering untold miseries and it would be extremely difficult to pay any further cost. They have somehow borrowed money to deposit an amount of Rs. 50,000/- before the trial Court.

7 Considering the above, I find that it would be harsh to

impose further costs on the petitioners who are aged persons and in failing health. An amount of Rs. 50,000/- has already been deposited by the petitioners before the trial Court and they have also filed their written statement. They have suffered enough for the lapses on their behalf and, I am of the view that they should not suffer any further punishment.

8 In view of the above, this petition is allowed. The impugned order dated 11.04.2017 is quashed and set aside. Application Exhibit 48 stands allowed. The original plaintiffs shall withdraw in equal share the amount of cost deposited, without conditions. The trial Court would be at liberty to frame additional issues, if felt appropriate in view of the written statement filed by petitioners. All the litigating sides are at liberty to lead additional evidence and the petitioners are also permitted to lead evidence.

9 The trial Court shall specifically observe the conduct of the petitioners while dealing with the suit and shall refuse adjournments, if their requests are based on unreasonable grounds.

10 The trial Court shall endeavour to decide Regular Civil Suit No. 11/2012 as expeditiously as possible and preferably on or

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before 30.06.2020.

This writ petition stands disposed off.

(Ravindra V.Ghuge, J.)

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