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

916 WRIT PETITION NO.810 OF 2019

LAXMAN HARIBHAU JAGTAP
VERSUS
SHIVAJI DEVIDAS MAINDA THROUGH LRS VATSLABAI
SHIVAJI MAINDAD AND OTHERS

...

Advocate for Petitioner : Mr. Kore Ganesh J
Advocate for Respondent Nos. 1A to 1D : Mr. S.G. Jadhavar

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**CORAM : P.R. BORA, J.
DATED : 12th APRIL, 2019.**

PER COURT:-

. Heard Shri Kore, the learned counsel appearing for the petitioner.

2. The petitioner has preferred the present petition against the order passed by the Joint Civil Judge, Junior Division, Kallamb on 31.10.2018 below Exhibit-120 in R.C.S. No.42 of 1998.

3. The present petitioner is defendant no.4 in the aforesaid R.C.S. No.42 of 1998. The material on record reveals that the aforesaid civil suit was initially dismissed by the Trial Court. The record further reveals that in the said civil suit, the present petitioner though was served did not file his written statement and it was proceeded without his

written statement. The original plaintiff filed Regular Civil Appeal No.217 of 2009 against the judgment and decree passed in R.C.S. No.42 of 1998. The material on record further reveals that the aforesaid civil appeal came to be allowed by the District Judge-III, Osmanabad vide order passed on 28.09.2015. The District Court vide the aforesaid order remitted the matter for deciding it afresh to the Trial Court. In the said order, the present petitioner was directed to appear before the Trial Court on 03.11.2015 and was also permitted to file his written statement. The material on record further reveals that the present petitioner did not file his written statement till 12.10.2018 and hence No W.S. order came to be passed against him on 31.07.2018. The material on record further reveals that the present petitioner filed an application on 12.10.2018 with a prayer for setting aside the No W.S. order passed against him. The application so filed by the petitioner has been rejected by the Trial Court on 31.10.2018 vide the impugned order. Aggrieved by, the petitioner has preferred the present petition.

4. It is the contention of the learned counsel appearing for the petitioner that since, certain documents could not be gathered by the petitioner, he could not submit his written statement in the matter. The learned counsel

further submitted that the petitioner is a bonafide purchaser of the suit property and as such, the Trial Court must have given him an opportunity to file his written statement though, some delay had occurred in filing the written statement. The learned counsel further submitted that the reasons which are assigned by the petitioner in justification of the delay have not been considered by the Trial Court. It is further contended that since, the delay was unintentional, the Trial Court must have given an opportunity to the present petitioner to file his written statement and to defend the suit on merits and in such circumstances, certain costs could have been imposed by the Trial Court, however, the Trial Court by declining to set aside the No W.S. order has shut the doors for the present petitioner to defend the suit though, he is having a very good case on merits.

5. Shri Jadhavar, the learned counsel appearing for the respondents i.e. original plaintiff has strongly opposed for causing any interference in the impugned order. The learned counsel submits that a well reasoned order has been passed by the Trial Court. The learned counsel further submitted that as has been observed by the Trial Court, the reasons which are now stated before the Court as regards to non-availability of certain documents, the Trial Court has

specifically observed that there is no disclosure in the application as to which the documents were to be filed on record and could not become available to the petitioner so that he could not file his written statement within time. He, therefore, prayed for rejecting the petition.

6. I have gone through the order passed by the Trial Court impugned in the present petition and the material placed on record. It is not in dispute that the present petitioner was a party to Regular Civil Appeal No.217 of 2009. It is further not in dispute that in the said appeal, the learned District Judge has directed the parties to appear before the Trial Court on 03.11.2015 and the present petitioner was permitted to file his written statement in the suit. The material on record as I mentioned earlier reveals that even though the petitioner appear in the said suit on 03.11.2015, he did not file his written statement till 31.07.2018 and hence on that day, the Court has passed No W.S. order against the petitioner. As has been observed by the Trial Court though the application came to be filed by the petitioner for setting aside the No W.S. order, no convincing reason was assigned in the application by the petitioner so as to consider his request to set aside the No W.S. order and as has been further observed by the Trial

Court, a vague submission was made that certain documents were not received and that was the reason that the petitioner could not file his written statement.

7. After having gone through the order passed by the Trial Court, it does not appear to me that the Trial Court has committed any error in rejecting the application filed by the present petitioner. The delay of 3 years has not at all been explained by the petitioner and as such no discretion was liable to be exercised in his favour. I do not see any merit in the petition. Hence, the following order:

ORDER

The writ petition is dismissed.

(P.R. BORA, J.)