

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.14814 OF 2019

SAI JEEVAN MEDICAL AND GENERAL SOTRES JALGAON

THROUGHITS PARTNERS AND OTHERS

VERSUS

NITIN PRALHAD BHADANE AND OTHERS

...

Advocate for Petitioners : Mr.Satyajit S. Bora

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 9th December, 2019.

PER COURT :-

1. The petitioners, original plaintiffs in Special Civil Suit No.110/2014, are aggrieved by the order of the Trial Court dated 01/11/2019 by which, application Exhibit-48 filed by defendant No.2 praying for leave to file the written statement, has been allowed.

2. The learned Advocate for the plaintiffs has strenuously criticized the impugned order by placing

reliance upon 9 grounds formulated in the memo of the petition. He submits that the suit has been filed in connection with an amount of Rs.60,00,000/-. Defendant No.2 initially evaded Court service of summons. Finally he was served on 08/09/2016. He appeared on 01/10/2016. He moved an application under Order VII Rule 11 of the Civil Procedure Code seeking rejection of the plaint, on 14/12/2016. The 'No W.S.' order was passed on 18/04/2017. Thereafter, defendant No.2 withdrew the application under Order VII Rule 11 of Civil Procedure Code on 19/07/2017 and filed application Exhibit-48 on 01/10/2019, which is practically after 2 years 6 months of the passing of the 'No W.S.' order.

3. I have considered the submissions of the learned Advocate for the plaintiffs and have perused the impugned order. I do find that, though the impugned order dated 01/11/2019 has been passed in the interest of justice, the costs should have been more than the amount which, defendant No.2 is directed to

pay to the plaintiffs considering the delay of 2 years and 6 months from the date of the 'No W.S.' order. However, for the said purpose, I do not find that this petition should be kept pending.

4. The learned Advocate for the plaintiffs submits that in the light of their prayer Clause E, in the alternative they would prefer to file an application seeking directions from the Trial Court to defendant No.2 to deposit the amount of Rs.60,00,000/- in the Trial Court.

5. Considering the above, this petition is disposed off. In the event, the petitioners move an application praying for directions to defendant No.2 to deposit the amount in the Court, the Trial Court will consider the same on its own merits, expeditiously and preferably within 2 months from the date of the filing of such application.

(RAVINDRA V. GHUGE, J.)