

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4291 OF 2018

Tatyasaheb Manik Gaikwad ...Petitioner

Versus

Archana Dattatraya Kalundre & ors. ...Respondents

Ms. Rajeshwari Patil, I/b Mr. S. S. Patwardhan, for the
Petitioner.

CORAM: N. J. JAMADAR, J.

DATED: 12th JULY, 2019

Oral Order :-

- 1.** Heard Ms. Patil, the learned Counsel for the Petitioner.
- 2.** By this petition under Article 227 of Constitution of India, the Petitioner assails an order passed by the learned Civil Judge, Junior Division, Pandharpur, on 8th March, 2017, whereby the learned Judge has set aside 'No Written Statement' order passed against defendant no.4 on 5th January, 2008 and has taken the written statement of defendant no.4 on record.
- 3.** The matter has reached this Court on second occasion. Initially, the learned Civil Judge by order dated 11th March, 2015 below 'Exhibit-92' had rejected the prayer of defendant no.4 to set aside 'No Written Statement' order and permit him

to file the written statement. The said order was challenged in Writ Petition No.559 of 2016. This Court by order dated 20th January, 2016 permitted defendant no.4 to withdraw the said application (Exhibit-92) with liberty to file fresh application furnishing the necessary details. Thereupon defendant no.4 filed application (Exhibit 101) ascribing the reason that on account of failure on the part of the Advocate, who was then representing defendant no.4, later could not file the written statement within time.

4. The learned Civil Judge was persuaded to take a view that a litigant should not suffer on account of inadvertence or mistake on the part of the Counsel, who represents the party. Furthermore, having regard to the nature of the suit, which was instituted for partition and separate possession, the learned Civil Judge was impelled to take a lenient view and allow defendant no.4 to contest the suit by permitting him to file the written statement. Being aggrieved, the Petitioner - original defendant no.3 has now approached this Court under Article 227 of Constitution of India.

5. Ms. Patil, the learned Counsel for the Petitioner urged that the learned Civil Judge committed an error in setting

aside the 'No Written Statement' order passed against defendant no.4.

6. At the outset, the very tenability of the petition at the instance of a co-defendant is questionable. Even otherwise, having regard to the nature of the dispute, and the reason assigned by the learned Civil Judge that in order to advance the cause of justice and ensure that the party does not suffer on account of inadvertence or mistake on the part of the Advocate, who represents the party, no interference is warranted in exercise of extra-ordinary jurisdiction under Article 227 of Constitution of India. It is trite that a lis has to be determined on merits so as to advance the cause of substantial justice.

7. In the circumstances, the petition does not deserve to be entertained and, accordingly, stands dismissed.

[N. J. JAMADAR, J.]