

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3265 OF 2019

Babu Ismail Patel
(Since deceased through
Lrs. & ors.)

.. Petitioners

vs.

Mumtaz R. Pathan
(Since deceased through
Lrs. & ors.) & ors.

.. Respondents

Mr. Omkar Mane I/b Mr. U.P. Warunjikar for the Petitioners.
Mr. Girish Agrawal for Respondent Nos.1A to 1G, 2, 3A to
3G, 4A, 4B, 4 C(i) to 4 C(vi).
Mr. Sambhaji Kharatmol il/b Mr. Bhushan Deshmukh for
Respondent Nos.5 and 13.

CORAM : M. S. SONAK, J.

DATE : 23 APRIL 2019.

ORAL JUDGMENT:

1] Heard Mr. Omkar Mane i/b Mr. U.P. Warunjikar for the petitioners, Mr. Agrawal for respondent Nos.1A to 1G, 2, 3A to 3G, 4A, 4B, 4 C(i) to 4 C(vi) and Mr. Sambhaji Kharatmol for respondent Nos.5 and 13.

2] Mr. Mane, learned counsel for the petitioners, states that in terms of the order made by this Court on 25th March 2019, the petitioners have deposited amount of Rs.10,000/- in this Court towards security for costs.

3] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

4] The challenge in this petition is to the order dated 31st January 2019 by which the petitioners' application seeking recall of “No W.S. Order” against them came to be rejected.

5] From perusal of the impugned order, an impression was created that the petitioners defaulted in filing written statement was only marginal. Further, it was represented that the petitioners are illiterate and ignorant in law and therefore written statement could not be filed within prescribed period. Based upon this impression, an order was made on 25th March 2019 requiring the petitioners to deposit an amount of Rs.10,000/- by way of security towards costs.

6] Mr. Agrawal, learned counsel for respondent Nos. 1A to 1G, 2, 3A to 3G, 4A, 4B, 4 C(i) to 4 C(vi), however, points out that there was already an *ex-parte* order made against the father of the petitioners. He points out that the petitioners have purchased the suit property during

pendency of the earlier suit. He points out that if these circumstances are taken into consideration, then there is no case made out to interfere with the impugned order.

7] From the perusal of the impugned order, it is apparent that all these matters have not been taken into consideration by learned Trial Judge. Mr. Mane, in fact, disputes the contentions raised by Mr. Agrawal. He reiterates that there was sufficient cause shown for not filing written statement within prescribed period.

8] According to me, the interests of justice will be served if the impugned order is set aside, subject to payment of costs of Rs.10,000/- to respondent N.2. However, at this stage, it will not be possible to allow the petitioners' application at Exhibit-116. Rather, this is a fit case where the application of the petitioners at Exhibit-116 is restored to the file of learned Trial Judge and the learned Trial Judge is directed to dispose of this application on its own merits and in accordance with law. Further, liberty is granted to the petitioners to file additional affidavit in support of Exhibit-116. So also the

respondents are granted liberty to file their detailed replies/affidavits in order to oppose the application at Exhibit-116. Exhibit-116 should be considered and disposed of in accordance with law as expeditiously as possible and in any case within six weeks from today. The petitioners, in case, they desire to file their additional affidavit within one week from today and the respondents to file their additional reply/affidavit within a period of one week from the receipt of such additional affidavit.

9] The impugned order is accordingly, set aside. Respondent No.2 is permitted to withdraw costs of Rs10,000/- deposited in this Court unconditionally. The application at Exhibit-116 is restored to the file of learned Trial Judge, who, consistent with the aforesaid directions, is directed to dispose of the same within eight weeks from today. All contentions of all parties are kept open.

10] Rule is made absolute in the aforesaid terms.

11] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)