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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7450 OF 2019

M/s. Wonder Land Agrofin Developers Ltd. ..Petitioner

vs.

Nanasaheb Bhagwan Sasar & ors. ..Respondents

....

Shri Jaydeep Deo for petitioner.

Shri V.V. Salunke for respondent Nos. 2 & 3.

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CORAM : M.S.KARNIK, J.

DATE : 26th AUGUST, 2019

P.C. :

Heard learned counsel for the petitioner.

2. The petitioner is the original defendant No. 5. It is the case of defendant No.5 that defendant Nos. 1 and 2 had executed agreement of sale in favour of defendant No.5. After execution of the agreement in favour of defendant No.5, defendant Nos.1 and 2 executed another agreement in favour of plaintiff. The plaintiff filed a suit for declaration and for cancellation of the agreement made in favour of defendant No.5 on the plea that the same is not binding on the plaintiff.

Defendant No.5 filed the written statement opposing the suit. Defendant Nos. 1 and 2 only filed say to Exhibit 5 application but did not file written statement. In the say filed by them they agreed that the property has been conveyed in favour of the petitioner and they have no concern with the suit property.

3. After the evidence of the plaintiff and defendant No.5 and after arguments of the plaintiff and defendant No.5 are over, the applications Exhibit 197 and Exhibit 201 are made by defendant Nos. 1 praying that they may be permitted to file written statement by condoning the delay of 4040 days and for setting aside 'no evidence order'. This on the premise that the say to Exhibit 5 application is already filed, the same may be treated as the written statement of defendant Nos. 1. The trial Court allowed the application by imposing cost of Rs.3000/-.

4. Leaned counsel for the petitioner pointed out from the say to Exhibit 5 application, that the defendant Nos. 1 and 2 had clearly stated in the pursis filed earlier that they do not have

any concern with the suit property and that they are supporting the case of plaintiff. It is further his contention that defendant Nos. 1 and 2 never participated in the proceedings. It is only after the evidence of plaintiff and defendant No.5 is over and on conclusion of the arguments, with a view to fill up the lacuna in the plaintiff's case that the defendant No.1 moved the applications. He would submit that having regard to the conduct of defendant No.1 and especially as there is no satisfactory explanation as to why the application is made after an inordinate delay of 4040 days, the trial Court was not justified in allowing the applications made by defendant No.1.

5. Learned counsel for original defendant No.1 supported the impugned order.

6. I have gone through the order passed by the trial Court. No doubt, the application for filing the written statement is made at a belated stage. Defendant No. 1 has prayed that the say to the Exhibit 5 application which is already on record be

treated as written statement. There is a delay of 4040 days in filing the application. The trial Court has condoned the delay and given an opportunity to defendant No. 1 to file the written statement by treating the say itself as a written statement. Further, the trial Court in the interest of justice has allowed the application made for setting aside 'no evidence order' as against defendant No. 1. The trial Court has observed that defendant No.5 has an opportunity to cross examine defendant No. 1 on all the facts including the fact of cancellation of agreement of sale. The trial Court was of the opinion that this exercise will not amount to retrial as the matter is still for argument of defendant Nos.1 and 2. The defendant No.1 claims to be an illiterate agriculturist.

7. Learned counsel for the petitioner relied upon the decision of this Court in the case of **Sanj Dainik Lokopchar vs. Gokulchand Govindlal Sananda in Writ Petition No. 5124 of 2017**. However, the said decision is in the context of Order XVIII Rule 3-A of the Code. In my opinion, the said decision has no

application to the facts of the present case. The order passed by the Trial Court does not therefore call for any interference.

8 While granting an opportunity to defendant No. 1 to participate in the trial, in my opinion, the trial Court should have allowed the application by imposing heavy cost on defendant No.1 instead of Rs.3,000/- only.

9. The order passed by the trial Court is modified and the amount of cost of Rs.3,000/- is enhanced to Rs.15,000/-. The balance of the costs be paid by defendant No.1 to defendant No.5 within a period of 2 weeks from today. Rest of the order does not call for interference.

10. The Petition is partly allowed.

(M.S.KARNIK, J.)