

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13719 OF 2018

PRAMILA DATTATRAY SHINDE AND ANR.)...PETITIONERS

V/s.

TUKARAM LAXMAN MANE (since deceased))

Through Legal Heirs)

PANDHARINATH TUKARAM MANE & ORS.)...RESPONDENTS

Shri.Vaibhav Gaikwad, Advocate for the Petitioner.

Shri.R.V.Bansode, Advocate for Respondent Nos.1A and 1B.

CORAM : A. M. BADAR, J.

DATE : 11th NOVEMBER 2019

P.C. :

1 This is a petition by legal representatives of deceased defendant no.1. By this petition, petitioners, who happen to be defendant nos.1A and 1B, being legal representatives of deceased defendant no.1, who was their father, are challenging the order dated 26th March 2018 passed by the learned trial court below

their application Exhibit 195. This application was filed for permitting them to file their written statement on record by setting aside the order of ‘no written statement.’

2 Heard the learned counsel appearing for petitioners /defendant nos.1A and 1B. He argued that within a period of ninety days from service of summons on petitioners/legal representatives of deceased defendant no.1, no written statement came to be filed against them and thereafter, they applied for taking their written statement on record. According to the learned counsel for petitioners/defendant nos.1A and 1B, the written statement ought to have taken on record by the learned trial court.

3 The learned counsel for respondents/original plaintiffs vehemently opposed the petition by contending that the suit is for partition and separate possession. Suit property is in possession of defendants. Therefore, defendants are trying to prolong the suit filed in the year 1996 by adopting dilatory tactics. There was no sufficient cause for filing the written statement belatedly. The

learned counsel further argued that the original defendant no.1 had already filed his written statement and therefore, his successors / legal representatives ought not to have filed any separate written statement. It is pointed out that the written statement sought to be filed by defendant nos.1A and 1B is replica of the original written statement filed by the deceased defendant no.1 and therefore, the learned trial court has rightly rejected the application.

4 I have considered the submissions so advanced and also perused the impugned order. The learned trial court has observed that the reasons stated for taking the written statement on record are vague and are not reasonable. It is further observed that original defendant no.1 had already filed the written statement, and therefore, his legal representatives are bound by pleadings of their predecessor.

5 Suit summons were served on petitioners/defendant nos.1A and 1B on 13th November 2017 and 9th November 2017 respectively. Record made available shows that they had

appeared on 27th November 2017 before the learned trial court and applied for grant of time to file written statement. It is seen that, on this very application itself, time was granted as a last chance. Reason cited in the first application itself is to the effect that important information and documents are awaited. Thereafter, on each dates, defendant nos.1A and 1B used to apply for time to file written statement. Their very next application came to be rejected on 5th February 2018. On 6th February 2018, the learned trial court passed an order below Exhibit 1 thereby directing the suit to proceed without written statement of defendant nos.1A and 1B. Then, on the very next date, i.e. on 26th February 2018, an application for permission to file written statement came to be moved by petitioners/defendant nos.1A and 1B. Averments in the said application are to the effect that original defendant no.1 had not informed defendant nos.1A and 1B about pendency of the suit or subject matter of the suit. The suit is an old one and therefore, it was necessary for defendant nos.1A and 1B to get information and documents for drafting the written statement. It is further averred by defendant nos.1A and

1B that they were unable to obtain old documents and information within the prescribed time limit and therefore, they could not file the written statement on record. Therefore, they filed this application at Exhibit 195 for setting aside the 'no written statement' order and for permitting them to file the written statement on record. However, the said application came to be rejected on 26th March 2018 with reasons as stated by this court in the foregoing paragraphs.

6 The suit is for partition and separate possession. It was instituted in the year 1996. Petitioners were impleaded as legal representatives of the original defendant no.1 in November 2017 and they moved an application in February 2018 itself for accepting their written statement on record by setting aside the 'no written statement' order. On an earlier occasion, they had applied for grant of time to file written statement with the reason that documents and information are not available with them. It is, thus, seen that cogent reasons were given by the newly added defendants for either adjourning or applying for taking their

written statement on record. As pointed out by the learned counsel for respondents/plaintiffs, the suit itself is of the year 1996. Petitioners/newly added legal representatives are married daughters of deceased defendant no.1, and as such, it was not expected of them to be aware about the pendency of the suit for partition and separate possession between their uncles and deceased father. Thus, the learned trial court ought to have accepted the written statement of the legal representatives of deceased defendant no.1 on record, in the light of sufficient and cogent reasons given by them. Similarly, the learned trial court erred in holding that legal representatives are bound by pleadings of their predecessor. Once they are arraigned as defendants, it is their choice to file their written statement. The impugned order, as such, cannot be sustained, and therefore the order :

ORDER

- i) The impugned order dated 26th March 2019 passed below the application Exhibit 195 is quashed and set aside.

- ii) The application at Exhibit 195 is allowed and written statement of defendant nos.1A and 1B is directed to be taken on record by setting aside the 'no written statement' order.
- iii) Considering the fact that the suit is of the year 1996, the learned trial court is directed to expedite hearing of the said suit and dispose it off within a period of eight months from the date of receipt of this order.

(A. M. BADAR, J.)