

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6796 OF 2019

Smt.Poonam Nandkumar Honmane and anr. .. Petitioners
Vs.
Shri Nandkumar Eknath Honmane and anr. .. Respondents

Mr.Prashant Darandale, for the Petitioners.
Mr.Rahul S.Kadam, for the Respondents No. 1 & 2.

CORAM : M.S.KARNIK, J.

DATE : 06th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioners.

2. The Petitioners are original defendants No.1 & 2. Plaintiff No.1 is the mother-in-law of defendant No.1. It is the contention of the plaintiffs that defendant No.1 married son of plaintiff No.1. There is some matrimonial dispute. Defendants No.1 & 2 are occupying the suit premises which belong to the plaintiffs. Plaintiff No.1 is 73 years of age and is dependent on

her daughter for her residence.

3. The suit summons came to be served on the defendants on 15/03/2018. Defendants appeared on 04/04/2018. The defendants did not file written statement and ultimately trial Court was constrained to pass 'No WS' order on 02/07/2018. After a delay of 6 months, application is filed below Exhibit 18 by the defendants for setting aside 'No WS' order and taking written statement on record. The trial Court rejected the application on the ground that delay is not satisfactorily explained.

4. Learned Counsel for the petitioners would submit that in the application filed below Exhibit 18 reasons have been stated that defendant No.1 has some health issues. Moreover, she has to look after her son – defendant No.2 who is 20 years of age.

5. Learned Counsel for respondents opposed the

Petition. According to him, reasons given by defendants for delay are false. He would submit that during this time, defendant No.1 was attending matrimonial proceedings regularly. According to him defendant No.1 is a teacher and attending school regularly. For all these reasons, learned Counsel would submit that reasons stated in the application are not bonafide.

6. Heard learned Counsel. In my opinion, for the reasons stated in the application that defendant No.1 is suffering from some health issues and also having regard to the fact that defendant No.1 has to look after her son who is 20 years of age, the delay of 6 months in filing written statement cannot be said to be so inordinate so as to defeat the right of defendants to defend the Suit. For the delay in filing written statement, plaintiffs can always be compensated with cost.

7. In this view of the matter, the present Petition is allowed subject to payment of cost of Rs.5,000/- payable by

defendants to plaintiffs within a period of 2 weeks from today. The 'No WS' order is set aside. Application Exhibit 18 is allowed.

8. Plaintiff No.1 is 73 years of age. Considering that she is seeking possession, it is made clear that written statement would be filed by the defendants within a period of 3 weeks from today. It is further made clear that the defendants would not seek unnecessary adjournments before the trial Court. Considering the age of the plaintiff No.1, the trial Court is requested to expedite the Suit.

(M.S.KARNIK, J.)