

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13746 OF 2017

Latabai Balendra Kshatriya and anr. .. Petitioners
Vs.
Shweta Chandrakant Kshatriya and ors. .. Respondents

Mr.Rahul D.Motkari, for the Petitioners.
Mr.Prashant D.Patil, for the Respondent No.2

CORAM : M.S.KARNIK, J.

DATE : 30th AUGUST, 2019

P.C. :

. Not on board. Taken on board.

2. Heard learned Counsel for the petitioners and learned Counsel for respondent No.2.

3. The petitioners are the original defendants No.1 and
3. The plaintiffs had filed the Suit for partition and separate possession. The respondent No.1 – original plaintiff is duly

served. This Court by order dated 02/05/2019 had adjourned the matter to 07/06/2019 with a view to give an opportunity to contesting respondent No.1 as she did not remain present on the scheduled date. Even thereafter there is no appearance on behalf of the respondent No.1 – original plaintiff.

4. Defendants No.1 & 3 had filed an application below Exhibit 88 for setting aside 'No W.S.' order dated 30/09/2006 against defendant No.1 and ex-parte order dated 25/01/2007 against defendant No.3. The reason given by the defendants No. 1 & 3 was that some compromise talks were going on between the plaintiff and defendants and therefore, they could not file written statement. No doubt, there is delay of near-about 10 years and 2 months on the part of defendant No.1 and delay of 9 years and 4 months on the part of the defendant No.3 in filing the application. When asked about the stage of trial, I am informed that affidavit of examination in chief has been filed on behalf of the plaintiff and plaintiff has been partly cross examined. The Suit is for partition and separate possession.

The petitioners should not be deprived of an opportunity to defend the Suit. Though the plaintiff is not present to contest this Petition, the plaintiff can always be compensated with cost. The trial is still at the stage where plaintiff's evidence is being recorded.

5. Respondent No.1 – original plaintiff failed to appear inspite of service of notice and grant of adequate opportunities by this Court to her to contest this Petition. Therefore also the Petition deserves to be allowed. The impugned order is set aside. The application Exhibit 88 is allowed.

6. For the delay caused in filing the written statement, the petitioners to pay cost of Rs.15,000/- to the plaintiff. The trial Court to take such further steps as may be necessary in view of the written statement of the petitioners which has now come on record including permitting the plaintiff to file additional evidence in chief. The Petition is allowed.

(M.S.KARNIK, J.)