

Laxmibai Vishnu Bharsat and Others ...Petitioners
vs.
Soni @ Somi Laxman Chaudhary and Ors. ...Respondents

CORAM : M. S. SONAK, J.

JUDGMENT

Heard Mr. Akhilesh Dubey, learned counsel for the Petitioners and Mr. Sandesh Patil, for Respondent No. 1 – Original Plaintiff.

2. Mr. Dubey states that all the Respondents have already been served. He points out that Respondent No. 1 being the original Plaintiff is the contesting Respondent.

3. Accordingly, Rule. Rule is made returnable forthwith.

4. The challenge in this Petition is to the order dated 19th June,

2017 by which the learned trial Judge has refused to condone the delay of about nine months and grant leave to the Petitioners/Defendant Nos. 1 to 6 to file their written statements. The reason stated by the Petitioner for the delay was that the son of the advocate who was appearing for the Petitioners was required to be admitted at the Lilawati hospital on account of serious ailment, to which he unfortunately and ultimately succumb. The learned trial Judge has not given sufficient emphasis to the aforesaid reason but has gone on the basis that the application seeking leave to file written statement was made at the highly belated stage since by the time such application was made the Plaintiff has already examined himself and his two witnesses.

5. According to me, the explanation furnished by the Petitioners in the context of serious difficulties expressed by their advocate was required to be considered. No doubt, the Respondent No. 1 – Plaintiff is bound to suffer prejudice if leave is now granted to the Petitioners to file their written statement. However, the prejudice is such as can be compensated by award of costs.

6. Taking into consideration that the suit is for partition and

number of properties are involved, interest of justice will be made if the impugned order is set aside, the delay is condoned and the Petitioners are granted liberty to file their written statement in the suit. All this, no doubt, will be subject to payment of cost of Rs. 50,000/- by the Petitioners to Respondent No. 1 – Plaintiff.

7. Accordingly, this Petition is disposed of with the following order:-

(a) The delay in filing written statement on the part of Petitioners is hereby condoned and the Petitioners are granted leave to file their written statement on record;

(b) The aforesaid is subject to the Petitioners' paying to Respondent No. 1 or depositing before the trial Court cost of Rs. 50,000/- within a period of four weeks from today;

(c) If the costs are deposited in the Court, then the Respondent No. 1 will be at liberty to withdraw the same unconditionally;

(d) If cost as aforesaid are indeed paid/deposited within four weeks from today then, the Petitioners to file their written statement within a period of four weeks thereafter;

(e) However, if the costs are not deposited within four weeks from today, then this Petition shall deemed to have been dismissed

with cost of Rs. 10,000/-.

(f) The trial Court, will then, have to re-cast the issues and if the Plaintiff so desires, the Plaintiff will have to be offered an opportunity to lead fresh convenient or additional evidence as the case may be.

8. The trial Court is directed to dispose of the suit as expeditiously as possible and all parties are directed to cooperate the learned trial Judge in the expeditious disposal of the suit.

9. The interim order granted in this Petition is now vacated.

10. The parties to appear before the trial Court on 30th April, 2019 at 11.00 am and produce authenticated copy of this order.

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

(M. S. SONAK, J.)