

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**WRIT PETITION NO. 4458 OF 2018**

Shivram Kashiram Mathkar and ors.      .. Petitioners  
Vs.  
Rajaram Vishram Dhanawade and ors.      ... Respondents

Mr. Aniket P. Ranade, for the Petitioners.  
None present for Respondents.

**CORAM : M.S.KARNIK, J.**

**DATE : 08<sup>th</sup> FEBRUARY, 2019**

**P.C. :**

.                    The petitioners are the original defendants No. 1 to 3. Respondents No. 1 & 2 - the original plaintiffs filed Suit before the Court of Civil Judge, Junior Division, Lanja for declaration and permanent injunction. The trial Court passed 'No WS' order against the petitioner's on 15/10/2015. The application at Exhibit 36 was filed by the petitioners to set aside the 'No WS' order. By the impugned order dated 14/06/2017, the trial Court dismissed the said application.

2. This Court by order dated 20/04/2018 while issuing notice indicated that as a very short issue is involved, if time permits, the matter will be taken up for final hearing at the stage of admission itself. Accordingly, the respondents are served. There is an office note indicating that as against unserved respondent No.2 (E), the Petition stands dismissed.

3. The trial Court has rejected the application Exhibit 36 on the ground that the delay of one and half years is inordinate and unexplained. In the application – Exhibit 36, it is stated that the relevant documents from the Revenue Department could not be obtained and therefore there has been delay in filing the written statement. In my opinion, considering the explanation given, and also considering the fact that the trial is yet to commence, in the interest of justice, the petitioners can be permitted to file their written statement subject to compensating the plaintiffs with costs quantified at Rs.2,500/-. The costs to be paid over to the plaintiffs within a period of 2 weeks from today. The written statement be taken on record.

The Petition is allowed in terms of prayer clause (a).

**(M.S.KARNIK, J.)**