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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13870 OF 2017

Kolte Patil Developers Ltd.

..Petitioner.

V/s.

Suresh Pandurang Ghule & Ors.

..Respondents.

Mr.Sideshwar N.Biradar for the petitioner.

Mr.P.G.Chavan for respondent Nos.1 to 10 and 12 to 14.

CORAM: M.S.SONAK, J.

DATE : MARCH 12, 2019

ORAL JUDGMENT

Heard Mr.Sidheshwar Biradar, learned counsel for the petitioner and Mr.P.G.Chavan, learned counsel for the respondent Nos.1 to 10 and 12 to 14.

2. Rule. Rule, made returnable forthwith. By consent of parties, the matter is heard finally and disposed of.

3. Challenge in this petition is to the order dated February 4, 2017 by which the learned trial Court has recalled the 'No written statement order' made against original defendant Nos. 1 to 10 on June, 17, 2016 and against the original defendant Nos.12 to 14 on

September 23, 2016.

4. Mr.Biradar, learned counsel for the petitioner submits that the delay in filing the written statement was almost 550 days, the explanation for which does not constitute sufficient cause. In these circumstances, learned trial Judge should not have recalled the order of '*No written statement order*'. Mr. Biradar submits that there are 14 defendants and, therefore, nothing prevented them from filing the written statement within time. He submits that in any case, the amount of costs is paltry and, since the petitioner's suit for partition was delayed by over two years, substantial costs ought to have been awarded.

5. Mr.Chavan, learned counsel for the respondents, defends the impugned order on the basis of the reasoning stated therein. He points out that the plaint was amended and if the date of amendment is considered, than the delay is not of 550 days. He submits that by now the written statement has been filed and the matter is now posted for evidence. For all these reasons, Mr.Chavan submits that the impugned order may not be interfered with.

6. Upon considering of rival submissions and perusal of record, there is no necessity to interfere in the impugned order in so far as the grant of leave to the original defendants to file the written statement is concerned. This is because the order promotes substantial justice. Sufficient cause was shown for the delay. The discretion

exercised by learned Trial Judge is neither unreasonable nor arbitrary. However, Mr.Biradar is right in his submission that the amount of costs awarded is meagre. In this case, there are almost 14 defendants and, therefore, each of the defendant should have been required to pay to the petitioner (original plaintiff) costs of atleast Rs.2,000/- each.

7. Accordingly, though the main portion of the impugned order, whereby the leave to file written statement came to be granted to the defendants is not interfered with, the amount of costs is enhanced from Rs.10,000/- to Rs.28,000/-. Thus, each of the defendants are directed to pay costs of Rs.2,000/- to the petitioner. The defendants will be allowed to adjust the amount of costs already paid. The enhanced costs to be paid within a period of two months from today. It is made clear that the payment of costs is not a condition precedent.

8. The impugned order is modified to the aforesaid extent only. The rule is made absolute to the aforesaid extent only.

9. There shall be no costs in this petition.

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

(M.S.SONAK, J.)