

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10318 OF 2018

Mangulal Pandurang Mokashi & Anr. ... Petitioners

Vs.

Shantabai @ Devayi Barku Deshmukh & Ors. ... Respondents

.....

Mr. Raju D. Suryawanshi for the petitioners.

None for the Respondents.

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CORAM : M. S. KARNIK, J.

DATE : 25th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. This is the petition filed by original defendant Nos.8 and 9. The plaintiffs filed a suit for partition and separate possession of the suit properties. By an order dated 16.6.2017 no written statement order passed against the petitioners was set aside subject to payment of cost of Rs.1,500/-. The petitioners failed to pay the cost and almost after one year the application was made that they are ready to deposit the cost. The Trial Court rejected the application below Exhibit 27. Pursuant to the order dated 27.8.2019 passed by this Court an affidavit of service has

been filed by the petitioners stating that the respondent No.2-original plaintiff No.2 has been duly served. The respondent Nos.1 and 3 are reported to be dead and therefore it is stated that steps have been taken to bring the legal heirs of respondent Nos.1 and 3 on record. However, in the light of the order that I propose to pass and considering that the order is passed by the Trial Court refusing to permit the petitioners to file the written statement in view of the delay in payment of cost, the present petition can be disposed of by imposing exemplary cost on the petitioners. None has appeared on behalf of respondent Nos.2 who is one of the plaintiff despite service of notice. It is stated that the petitioner No.1 was not keeping well and financial position of the petitioner No.1 was not sound. The reasons are obviously not satisfactory. However, considering that before the Trial Court petitioners had shown readiness to deposit the cost, the Trial Court could have allowed the application Exhibit 27 by imposing exemplary cost on the petitioners.

3. The present petition is allowed subject to payment of cost of Rs.5,000/-. The cost of Rs.5,000/- to be deposited in

the Trial Court within a period of two weeks from today which plaintiffs are permitted to withdraw. The impugned order is set aside. Application Exhibit 27 is allowed.

4. It is made clear that if the cost of Rs.5,000/- and also the cost of Rs.1,500/- as directed by the Trial Court is not deposited within a period of two weeks from today, the impugned order shall stand.

(M. S. KARNIK, J.)