

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13370 OF 2018

Shri Laxman Namdeo Waje	.. Petitioner
Vs.	
Shri Bhimaji Namdeo Waje and ors.	.. Respondents

Mr.Vaibhav R. Gaikwad, for the Petitioner.
Mr.Arun J.Bhor, for the Respondents No. 1 & 2.

CORAM : M.S.KARNIK, J.

DATE : 24th SEPTEMBER 2019

P.C. :

. Heard learned Counsel.

2. The petitioner is the original defendant No.1. Respondent No.1 – plaintiff filed the Suit for declaration and for partition. The suit summons came to be served on defendant No.1 on 12/11/2008. He duly appeared on 13/11/2008 through his Advocate. Defendant No.1 did not file written statement for a long time. On 19/11/2015 the trial Court

passed an order that though defendant No.1 appeared but has not filed written statement and therefore, the Suit to proceed without written statement. The petitioner – defendant No.1 filed application below Exhibit 50 on 13/11/2017 for setting aside ‘NO WS’ order. By the impugned order the trial Court rejected the application as the trial court did not find the reasons for condoning the delay to be satisfactory and moreover, even the conduct of defendant No.1 was commented upon.

3. Learned Counsel for respondent No.1 – original plaintiff supported the order passed by the trial Court. He invited my attention to the application made for setting aside the ‘NO WS’ order. He further invited my attention to the reasons recorded by the trial Court to submit that the discretion exercised by the trial Court in refusing to condone the delay does not warrant any interference. He further submitted that the Suit is of the year 2008 and right upto 19/11/2015 defendant No.1 had an opportunity to file written statement. It is further contended that it is only after the plaintiff tendered his

affidavit of examination of chief, that at the stage of cross examination, application is made for setting aside 'NO WS' order.

4. I have gone through the order passed by the trial Court. By order dated 19/11/2015 trial Court observed that the defendant No.1 has not filed the written statement and hence, the Suit to proceed without written statement. In the application made at Exhibit 50, defendant No.1 stated the reason that as settlement talks were going on between the parties, written statement was not filed. Undoubtedly, there was delay in filing the written statement. The reason that settlement talks were going on does not appear to be very satisfactory. However, in the interest of justice, in my opinion, defendant No.1 should not be deprived of an opportunity to defend the Suit for want of written statement. The plaintiff has filed his affidavit of examination in chief and therefore the inconvenience caused to the plaintiff can be compensated by imposing cost on defendant No.1.

5. In this view of the matter, subject to payment of cost of Rs.10,000/- by defendant No.1 to the plaintiff within a period of 2 weeks from the date of uploading the order, written statement of defendant No.1 be taken on record. The impugned order is set aside. Application Exhibit 50 is allowed.

6. Writ Petition is allowed in the above terms. It is made clear that defendant No.1 will co-operate with the trial Court in the expeditious disposal of the Suit. As Suit is of the year 2008, the trial Court is requested to expedite the Suit.

(M.S.KARNIK, J.)

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