

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 3183 OF 2019

Suresh M. Nigade

.. Petitioner

vs.

Yogendra K. Nigade and ors.

.. Respondents

Mr. Rakesh S. Patil for the Petitioner.

Mr. M.M. Gadkari for Respondent Nos.1 and 2.

Ms Harshalata M. Patil for Respondent Nos.14 to 22 and 26 to 29.

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

**DATE : 02 APRIL 2019.**

**P.C. :-**

1] Heard Mr. Rakesh Patil, learned counsel for the petitioner, Mr. Manoj Gadkari, learned counsel for respondent Nos. 1 and 2 and Ms harshalata M. Patil, learned counsel for respondent Nos.14 to 22 and 26 to 29.

2] The petitioner, in this case, is the original defendant No.1 and respondent Nos.1 and 2 are the original plaintiffs in Regular Civil Suit No. 8 of 2014. The suit was for partition.

3] The challenge in this petition is to the impugned order by which the learned Trial Judge has dismissed the petitioner's application for condonation of delay and setting aside the *ex parte* decree.

4] Mr. Gadkari, learned counsel for respondent Nos.1 and 2, on basis of instructions from his client who is present in the Court, consents to the impugned order being set aside subject to payment of costs of Rs.1,00,000/- (Rupees One Lakh). Mr. Patil, learned counsel for the petitioner, on basis of instructions from the petitioner, who is present in the Court, states that the petitioner will pay costs of Rs.1,00,000/- within a period of four weeks from today.

5] Since, the contesting party, i.e., plaintiffs have conceded the setting aside of the impugned order and restoration of the suit, the impugned order is set aside and Regular Civil Suit No. 8 of 2014 is restored to the file of learned Trial Judge.

6] The aforesaid is subject to the petitioner depositing before the Trial Court within a period of four weeks from today an amount of Rs.1,00,000/-. If such amount is deposited, respondent Nos.1 and 2 are at liberty to withdraw the same unconditionally.

7] If the amount is not deposited within four weeks from today, then this petition shall be deemed to have been dismissed without any further reference to this Court.

8] If the amount of costs are indeed deposited and the suit is restored, then the petitioner is granted liberty to file a written statement within a period of four weeks from the date of deposit of the amount.

9] If any of the other defendants in the suit desire to file their written statement, they may also do so within a period of four weeks from the date of restoration of the suit.

10] Writ Petition is disposed of in the aforesaid terms.

11] Since the suit is of the year 2014, the learned Trial Judge is directed to dispose of the same, as expeditiously as possible and in any case by 30<sup>th</sup> June 2020.

12] All parties, including in particular, the petitioner to cooperate with expeditious disposal of the suit.

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

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