

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

20 WRIT PETITION NO.2456 OF 2020

SANTOSH APPASAHEB JAGTAP
VERSUS
CHANDRAKANT DIGAMBAR JAIN AND OTHERS

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Mr. S.C. Bhosle, Advocate for the petitioner.

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CORAM : **Rohit B. Deo, J.**

DATE : 11th February 2020.

ORDER :-

. The petitioner is defendant 5 in Special Civil Suit 5 of 2008 brought for removal of encroachment and possession, and is aggrieved by the order dated 27.01.2020, whereby the learned Civil Judge, Senior Division, Majalgaon rejected the application (Exh.136) preferred by defendant 5 for setting aside the “no written statement” order with costs of Rs. 10,000/-

2. Perusal of the application for setting aside “no written statement” order dated 19.08.2008 reveals that justification for seeking setting aside of the “no written statement” order after 11 years 5 months and 2 days, is that the important documents were not available.

3. The plaintiff pointed out that the same Counsel represented defendants 1, 2, 4 and 5. Defendants 1, 2 and 4 did file their written statement and placed on record the relevant documents. The learned Civil Judge, Senior Division has considered the issue of the delay in preferring appeal thus :

“6. I find that in the mean time defendant No.5 was not awoken to set aside order passed against him. Defendant No.5 has mderely mentioned the reason that he could not get the record of the suit property prior to the consolidation scheme and the documents in respect of the litigations filed by the plaintiff in respect of the suit property. I find that the reason mentioned for the delay caused is not at all reliable and plausible as the documents in respect of the litigations and the documents related to the revenue, consolidation scheme can be easily obtained being public documents in the form of certified copies. I also hold that defendant No.5 has slept over his right over a long over of 11 years 5 months and 2 days. It is to be noted that Ld. Adv. for defendant No.1, 2, 4 and 5 is the same. Defendant No.1, 2 and 4 are the seller of the area of 100 x 100 feet admittedly out of the suit property to defendant No.5. They have

filed their written statement in accordance of it at Exh.39”.

4. I do not see any error in the order impugned.
5. The petition is dismissed.

(ROHIT B. DEO, J.)

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