

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 3561 OF 2020**

DR CHANDRAKANT ABASAHEB LAHANKAR  
VERSUS  
SUHAS ABASAHEB DESHMUKH LAHANKAR

...

Advocate for the Petitioners : Shri A. A. Mukhedkar

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**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 4<sup>th</sup> MARCH, 2020**

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***PER COURT :***

1. The Petitioner / original plaintiff in Regular Civil Suit No. 106/2018, is aggrieved by the order dated 17/01/2020, by which, the Trial Court has allowed application Exhibit 27 filed by the Respondent and by imposing costs of Rs. 3,000/-, has permitted him to file his written statement.

2. The dates and events in this matter are as under :-

(a) The suit summons were issued on 20/03/2018.

(b) The summons were served on the Respondent / defendant on 30/07/2018.

(c) 'No Written Statement.' order was passed on 05/10/2018.

(d) Application Exhibit 27 was filed on 13/11/2019.

3. The learned Advocate for the Petitioner submits that these two real brothers have been at loggerheads for several years. In an earlier suit, they were before this Court in Writ Petition No.1330/2013. The defendant had suffered a 'No W.S.' order and had approached this Court. This Court has dismissed the Writ Petition.

4. The dates and sequence of events in Writ Petition No. 1330/2013 are as under :-

(a) The defendant appeared in the earlier Regular Civil Suit No. 93/2009 on 06/12/2009.

(b) No W.S. order was passed on 06/11/2009.

(c) He moved an application Exhibit 61 on 22/11/2012, after three years for filing a written statement.

(d) By order dated 07/1/2013, the Trial Court rejected Exhibit 16.

5. The difference in these two cases is that the same defendant had approached the Trial Court for executing the 'No W.S.' order dated 06/11/2009, by filing Exhibit 61 on 22/11/2012. In the instant case, however, the Trial Court passed the order of 'No W.S.' on 05/10/2018. The defendant moved Exhibit 27 on 13/11/2019. So also, the Trial Court has imposed costs of Rs. 3,000/- on the defendant to be paid to the plaintiff.

6. In matters requiring condonation of delay, the Honourable Apex Court has taken a view in the matters of ***Collector, Land Acquisition, Anantnag v/s. Mst. Katiji, AIR 1987 SC 1353 and Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649***).

7. In the instant case, the defendant had approached the Trial Court after 13 months praying for leave to file the written statement. In Writ Petition No.

1330/2013, the defendant had approached the Trial Court on 22/11/2012 praying for vacating the 'No W.S.' order dated 06/11/2009. The delay was of three years. I am, therefore, of the view that an order passed on 16/06/2014 by this Court in Writ Petition No.1330/2013 would not apply to the distinguishable facts and circumstances of this case.

8. I find that the Trial Court has imposed substantial costs of Rs. 3,000/- to be paid to the Petitioner plaintiff.

9. In view of the above, this petition, being devoid of merit is, therefore, dismissed.

**(RAVINDRA V. GHUGE, J.)**

shp/-