

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

45. WRIT PETITION No. 3740 / 2014

Kailash S/o Tatyrao Kusale and another ...Petitioners

VERSUS

Tukaram Ganapati Aawarade ...Respondent

Mr. Y.K. Delmade, Adv., h/f. Mr. G.P. Shinde, Adv. for petitioners.
Mr. Girish K. Thigle-Naik, Advocate for respondent.

CORAM : ROHIT B. DEO, J.

DATE : 22nd January, 2020

PER COURT :

1. This petition, which is filed on 24th March 2014, challenging the order dated 3rd March 2014, whereby the application to file written statement on record is rejected, has seen the light of the day for admission after nearly six years.

2. The petitioners are defendants No.1 & 2 in Reg. civil suit No. 144/2013, who were supposed to file their written statement on or before 27th January 2014. This was not done and an application dated 20th February 2014 was preferred seeking permission to place on record the written statement. No justification for the delay was

attempted and all that was said that it is necessary and just that such permission be granted.

3. The Trial Court rejected the application observing that reasons for delay were not explained. While viewed strictly legalistically the observation of the Trial Court is not wrong, ultimately, important property rights are involved and the delay was only of 23 days or nearabout. The provisions of Order VIII Rule 1 of C.P.C. are held directory by the Apex Court.

4. However, this petition is kept pending since last six years and in the interregnum, evidence of some witnesses is recorded. In this view of the matter, while I am inclined to grant an opportunity to the petitioners to file written statement, the plaintiff shall have to be compensated.

5. Subject to payment of costs of Rs. 20,000/- (Rs. Twenty thousand only), which is condition precedent, the order impugned is set aside.

6. The written statement filed on record be read and recorded.

7. The Trial Court shall frame/recast issues in the light of

the written statement, within a week, and then proceed to record the evidence.

8. The entire evidence shall be recorded within 90 (ninety) days of framing of the issues.

9. No adjournment shall be granted unless extremely compelling circumstance is made out.

10. The suit shall be finally decided within two weeks of the completion of the evidence.

11. The petition is allowed in aforesaid terms.

(ROHIT B. DEO)
JUDGE

Madkar