

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

WRIT PETITION NO.8627 OF 2017

FAKHRUDDIN AMEER HUSSAIN BUDRE
VERSUS
SABERA BEGUM AMEER HUSSAIN BUDRE AND
OTHERS

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Advocate for Petitioner : Mr Gunale V.D.
Advocate for Respondent 1 : Mr.Quadri S.A.

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CORAM : V.K. JADHAV, J.
Dated: January 16, 2020

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PER COURT :-

1. With the consent of the parties, heard finally
at admission stage.

2. The petitioner is the original defendant no.3.
Trial Court has passed the order of 'No Written
Statement' against the petitioner/original defendant
no.3 on 15.12.2016. The petitioner/original defendant
no.3 had filed an application Exh.29 for setting aside
the 'No W.S.' order. The learned Judge of the trial Court
by order dated 18.11.2016 allowed the said application
Exh.29 alongwith Exh.27 and 34 filed with similar
prayers by other defendants subject to costs of
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Rs.500/-. However, the petitioner/original defendant no.3 has not deposited the said costs of Rs.500/-. The petitioner/original defendant no.3 filed an application Exh.47 to deposit the costs and set aside the order of 'No W.S.' passed against him and by the impugned order on 17.4.2017 the learned Civil Judge, J.D. Deoni rejected the application exh.47. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the matter pertains to the dispute in respect of the immovable property. It is a suit for partition and separate possession. The learned counsel submits that the 'No W.S. order' came to be passed as against the petitioner/defendant no.3 on 15.12.2016 and the impugned order came to be passed on 17.4.2017. The petitioner is ready to deposit the costs forthwith before the Trial Court and his application Exh.47 may be allowed in terms of its prayer clauses.

4. Learned counsel appearing for respondent no.1 has strongly resisted the petition. According to him, Trial Court has recorded conduct of the
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petitioner/defendant no.3. In paragraph no.4 of the impugned order, the trial court has specifically observed that petitioner/defendant no.3 is not interested in conducting the matter diligently nor he is interested in following the orders of the Court. Learned counsel submits that this amounts to contempt of the Court's order. Learned counsel appearing for respondent no.1 placed his reliance on a judgment in case **of M/s SCG Contracts India Pvt. Ltd. Vs. K. S. Chamankar Infrastructure Pvt. Ltd. and others in Civil appeal No.1638 of 2019 (arising out of Special Leave Petition @ No.103 of 2019)** and particularly on paragraph no.16 and submits that the writ petition is liable to be dismissed.

5. After passing 'No Written Statement' order on 15.12.2016 finally, the impugned order came to be passed after a gap of four months. It is a suit for partition and needless to say that in a suit for partition all the parties are the plaintiffs. Thus, considering the entire aspect of the case, as one more opportunity to the

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petitioner/original defendant no.3 to deposit the costs and to get the 'No Written Statement' order set aside, I am inclined to allow this writ petition. Hence, order.

O R D E R

1. Writ Petition is hereby allowed.
2. The impugned order dated 17.4.2017 passed by the learned Civil Judge J.D. Deoni below Exh.47 in Regular Civil Suit No.2 of 2016 is hereby quashed and set aside.
3. The application at Exh.47 in Regular Civil Suit No.2 of 2016 is hereby allowed in terms of its prayer clause.
4. Writ Petition accordingly disposed off.

(V.K. JADHAV, J.)

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