

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

WRIT PETITION No. 291 /2020

Shrikishan Sambhaji Shinde

...Petitioner

VERSUS

The Collector Office, Beed and others

...Respondents

Mr. V.V. Bhavthankar, Advocate for petitioner

Mr. S.K. Tambe, Asstt. Govt. Pleader for respondents No. 1 to 3

CORAM : ROHIT B. DEO, J.

DATE : 13th January, 2020

PER COURT:

1. The petitioner is the plaintiff in Reg. civil suit No. 2/2011 brought for declaration of ownership and perpetual injunction.
2. By the order impugned dated 18/02/2019, the Trial Court allowed the application of defendant No.7 and set aside 'No Written Statement' order, subject to payment of costs of Rs. 5000/- (Rs. Five thousand only).
3. The plaintiff did not challenge the order dated 18th February 2019 immediately. It appears that defendant No.7 did not

pay the costs within the time stipulated and moved an application dated 16th April 2019 for permission to deposit the cost. The Trial Court allowed the application to deposit costs of Rs. 5000/- subject to the condition that defendant No.7 deposits an additional amount of Rs. 2000/- (Rs. Two thousand only). It is at this stage that the plaintiff feels aggrieved and is challenging the order dated 18th February 2019, whereby the 'No Written Statement' order passed against defendant No.7 is set aside.

4. I am not inclined to interfere with the writ jurisdiction for the reasons more than one.

5. The Trial Court exercised the discretion, which is not shown to me capricious.

6. Indeed, the plaintiff was not then aggrieved and it was only because the Trial Court permitted defendant No.7 to deposit costs of Rs. 5000/-, and that too, subject to payment of additional costs of Rs. 2000/-, that the plaintiff felt impelled to challenge the basic order dated 8th February 2020 of setting aside 'No Written Statement' order passed against defendant No.7.

7. Perusal of the reasons recorded by the Trial Court to set aside 'No Written Statement' order against defendant No.7 would

reveal that defendant No.7 alleged that his cousins - defendants No. 8 & 9 colluded with the plaintiff. Defendant No.7 was kept in dark by defendants No. 8 & 9, who on their part did not participate in the proceedings. The justification given by defendant No.7 for inability to file the written statement is accepted by the Trial Court and in absence of any miscarriage of justice I do not see any reason why the discretion ought to be interfered with in Writ Jurisdiction. The petition is dismissed.

8. It is made clear that if the cost is not paid till date, the same shall be paid within seven days.

9. However, considering the nature of the dispute, the Trial Court is directed to decide the suit expeditiously and in any event within one year.

(ROHIT B. DEO)
JUDGE.

Madkar