

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 WRIT PETITION NO.517 OF 2019

ANURADHA LAXMAN BHALERAO
VERSUS
LAXMAN DEVIDAS DOIPHODE

.....
Advocate for Petitioner : Mr. Patil Milind M. (Beedkar)
Advocate for Respondents : Mr. Y.K. Delmode h/f Mr. G.P. Shinde
.....

CORAM : V. K. JADHAV, J.
DATED : 12th MARCH, 2020

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. The respondent-original plaintiff has filed an application Exh.54 for amendment in the plaint. The respondent plaintiff has instituted the suit bearing Regular Civil Suit No. 121 of 2012 for recovery of possession and decree of perpetual injunction. By way of application Exh.54, filed after a period of six years, the increased portion of encroachment on suit land and also the boundaries of the suit land sought to be introduced. By order dated 11.01.2018, the trial court allowed the application Exh.54. The respondent-plaintiff had filed amended plaint on 31.01.2018. It appears that thereafter by order dated 12.03.2018 below Exh.1 the trial court has passed "no consequential written statement order". The petitioner-defendant has filed an application Exh.69 of setting aside the said order. However, by impugned order dated 29.10.2018 the trial court has rejected the

said application. Hence, this writ petition.

3. It appears that there is delay on the part of the respondent-plaintiff to file an application seeking amendment in the plaint. The said application Exh.54 came to be filed six years after institution of the suit. Apart from that, the petitioner-defendant has also not filed additional written statement within time and consequential order came to be passed on 12.03.2018, as 'no consequential written statement'. It thus appears that there is also delay on the part of petitioner in filing the application for setting aside the said order passed on 12.03.2018 below Exh.1. However, the additional written statement of the petitioner-defendant is necessary. The petitioner can be saddled with some costs for filing additional written statement belatedly. Learned counsel for the petitioners submits that in terms of order dated 16.1.2019 passed by this Court, the petitioner has deposited of Rs.5000/- before the trial court and the same shall be paid to the respondent-plaintiff by way of costs. I am thus, inclined to allow this writ petition subject to payment of costs of Rs.5000/- to be paid by the petitioner-defendant to the respondent-plaintiff. Hence, I proceed to pass the following order:-

O R D E R

I. Writ petition is hereby allowed.

- II. The impugned order dated 29.10.2018 passed by Joint Civil Judge, Junior Division, Court No.2, Jintur below Exh. 69 in Regular Civil Suit No. 121 of 2012 is hereby quashed and set aside.
- III. The application Exh.69 in Regular Civil Suit No. 121 of 2012 is hereby allowed in its entirety in terms of its prayers subject to payment of costs of Rs.5000/- to be paid by the petitioner-defendant to the respondent-plaintiff.
- IV. In terms of order dated 16.1.2019 passed by this Court, the petitioner has deposited of Rs.5000/- before the trial court and the same be paid to the respondent-plaintiff.
- V. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

rlj/