

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11453 OF 2019**

Abhiman Magar Nagargoge and Anr. ... Petitioners
Versus
Tukaram Vishwanath Sangle ...Respondent

Mr. G. N. Salunkhe i/b Mr. Umesh Kurund, for the Petitioners.

CORAM : REVATI MOHITE DERE, J.

DATE : 26th FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioners have impugned the order dated 18th February, 2017, passed by the learned Civil Judge, Senior Division, Barshi, below Exhibit – 44 in R.C.S. No.112 of 2013, by which, the learned Judge was pleased to reject the petitioners' (original defendant nos.4 and 5) application for setting aside the order dated 1st August, 2016, as well as the order dated 18th April, 2018, passed below Exhibit – 52, by which, the learned Judge rejected the review application filed by the petitioners.
3. Learned Counsel for the petitioners submits that the costs of Rs.300/- could not be paid as directed by the trial Court vide order dated 13th December, 2013, within the stipulated period, as the petitioners had

gone to their village as there was a drought. He submits that in the interest of justice, the delay be condoned.

4. Perused the papers as well as the impugned orders. The respondent – plaintiff had filed R.C.S. No. 112 of 2013 on 14th December, 2011. In the said suit, the respondent – plaintiff had prayed for a declaration that a *Will* dated 18th August, 2007 executed by Radhikabai Lathe, bequeathing the suit property to the respondent – plaintiff was valid and that they be declared as owners of the same. The petitioners' (original defendant nos.4 and 5) were served with a summons on 30th January, 2013. Despite service of summons to the petitioners on 30th January, 2013, the petitioners failed to file their written statement, within the stipulated period. It appears that the petitioners appeared in the trial Court on 27th September, 2013 and sought condonation of delay in filing the written statement. The trial Court vide order dated 13th December, 2013, permitted the petitioners to submit their written statement, subject to payment of costs of Rs.300/- to be paid, before the next date i.e. on or before 17th January, 2014. Admittedly, the petitioners failed to comply with the order dated 13th December, 2013. It appears that when the case appeared in due course on 1st August, 2016, it was noticed that the petitioners had not deposited costs, pursuant to which the learned Judge rejected the petitioners application in

default and hearing of the suit was proceeded with. It is only on 21st January, 2017, that the petitioners filed an application and sought permission to deposit costs as directed by the trial Court on 13th December, 2013. It is pertinent to note that the order dated 13th December, 2013, was not complied with for about 3 years. Although, learned counsel for the petitioners submitted that the petitioners had gone to their village due to drought, the application is bereft of details as to which village and the period of drought. A perusal of the application filed by the petitioners is bereft of details nor does it show sufficient cause for entertaining the said application, which is filed belatedly after more than 3 years. The trial Court had imposed a nominal costs of Rs.300/- whilst condoning the delay in filing the written statement, however, despite the same, the said amount was not deposited within the stipulated period and even thereafter.

5. Considering the aforesaid, no infirmity can be found in the impugned orders, by which the petitioners application seeking permission to deposit the amount as well as the review application, were rejected.

6. Accordingly, petition is dismissed.

REVATI MOHITE DERE, J.