

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 553 OF 2020

1. Shri. Jalindhar s/o. Gangaram Jare,
Age 51 years, Occu. Agri. / Labourer,
R/o. Pimpalwandi, Tqluka Patoda,
District Beed.
2. Shahadev s/o. Gangaram Jare,
Age 46 years, Occu. Agri./ Labourer,
R/o. As above.
3. Parmeshwar s/o. Kishanrao Jare,
Age 56 years, Occu. Agri./ Labourer,
R/o. As above.
4. Narayan s/o. Kishanrao Jare,
Age 58 years, Occu. Agri./ Labourer,
R/o. As above.
5. Vitthal s/o. Parmeshwar Jare,
Age 26 years, Occu. Agri.,
R/o. As above.

.. Petitioners
(Original Defendants)

Versus

1. Krishannath s/o. Kashinathrao Kulkarni,
Age 71 years, Occu. Agri.,
R/o. Saphalya Printers, 461/1,
Sadashiv Peth, Pune-30.
At present R/o. Pimpalwandi,
Taluka Patoda, District Beed
2. Usha w/o. Dharindhar Kulkarni,
Age 76 years, Occu. Household,
R/o. 1162, Gokhale Nagar, Pune – 16
3. Madhuri w/o. Mukund Dev,
Age 54 years, Occu. Household,
R/o. As above.

4. Narendra s/o. Dharindhar Kulkarni,
Age 52 years, Occu. Service,
R/o. As above.
5. Shrikant s/o. Dharindhar Kulkarni,
Age 45 years, Occu. Service,
R/o. As above.
6. Shubhada w/o. Shamrao Kulkarni,
Age 56 years, Occu. Household,
R/o. Pimpalwandi, Taluka Patoda,
District Beed.
7. Hrishikesh s/o. Shamrao Kulkarni,
Age 36 years, Occu. Service,
R/o. As above.
8. Deepali w/o. Sachin Kulkarni,
Age 31 years, Occu. Household,
R/o. Ambegaon, Katraj, Pune.

.. Respondents
(Original Plaintiffs)

...

Mrs. P. V. Langhe, Advocate for Petitioners

Mr. R. P. Dhase, Advocate for Respondents No. 1 to 8

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09-12-2021

PER COURT :-

Rule. Rule made returnable forthwith. Heard finally with the consent of learned Advocates for the appearing parties.

2. Petitioners-original defendants are aggrieved by the impugned common order below Exhibits No. 44 and 46, passed by the learned Civil Judge, Junior Division, Patoda, in Regular Civil Suit No. 83 of 2014, dated 23-11-2019, thereby rejecting the

Applications filed by petitioners seeking to set aside 'No Written Statement' order passed against them.

. The respondents-original plaintiffs filed suit bearing RCS No. 83 of 2014 for a declaration that they are exclusive owners of the suit property, described in paragraph no. 1 of the plaint and for perpetual injunction that the defendants shall not cause any obstruction or interference in peaceful possession of the plaintiffs over the suit property.

. After receipt of the suit summons, petitioners-defendants caused their appearance. However, thereafter, since petitioners-defendants failed to submit their written statement within stipulated time, 'No W.S' order was passed against the defendants no. 1 and 2 on 18-10-2014 and against defendants no. 3 and 4 on 10-10-2014.

. The suit proceeded and was posted for arguments of the plaintiffs and the defendants. Thereafter, the petitioners filed applications at Exhibits-44 and 46 seeking the relief of setting aside 'No W.S.' order and requesting to accept the written statement filed along with said applications. The applications were resisted by the respondents-plaintiffs. The trial Court rejected the said applications by common order passed below Exhibits-44 and 46 on 23-11-2019. The said order is impugned in the present petition.

3. Heard the learned Advocate for the petitioners and learned Advocate for the respondents.

4. The petitioners have contended in their applications at Exhibits-44 and 46, that they are labourers, they proceeded for harvesting the sugarcane crop to Gujrat, due to which, they could not keep the track of the matter, and therefore, they could not file their written statement within stipulated time. They further contended that the suit is in respect of immovable property, which is purchased by them by way of registered sale deed. They are illiterate and they could not get the certified copies of the earlier / previous suit filed by the respondents for the same relief in time, therefore, they could not file written statement within time.

5. Admittedly, earlier, RCS No. 117 of 1981 was filed by the respondent no.1 and his two brothers and mother, seeking similar relief of declaration and ownership of the suit property, wherein, the petitioners were the original defendants and they had filed written statement. The said suit was dismissed in default on 02-07-2001. The respondents, thereafter, filed Miscellaneous Civil Application No. 23 of 2001. In the said application also petitioners-defendants filed their say. Said civil application also was dismissed-in-default on 19-06-2007.

6. The present suit, according to petitioners, is filed for declaration of the ownership of the suit property on the same contentions for the same relief. According to the petitioners, they had purchased suit property by a registered sale deed in the year 1981. The same is also admitted by the plaintiffs in paragraph no. 9 of the plaint.

7. Taking into consideration the facts of the present case, the trial Court ought to have favourably considered the applications by petitioners-original defendants and ought to have allowed them to file the written statement and should have considered the suit on merits. Though, it is fact that the applications are filed by the petitioners-original defendants belatedly, however, the respondents-plaintiffs can be suitably compensated for the delay caused by the petitioners in that behalf.

8. In ***Dhiraj Vijaykant Kudale Versus Anita Ramchandra Raskar and others, 2013(1) All MR 119***, the Single Bench of this Court has held that "*Provisions of Order VIII, Rule 1 of the Civil Procedure Code, 1908, are directory and not mandatory and for good and sufficient reasons, statutory period for filing written statement and evidence can be extended*".

9. In ***Adamji Gulamhussein Tavawalla Versus Maria Emillia Vaz and others, 2018 LawSuit (Bom) 2730***, learned

Single Judge of this Court held thus :

"8. It is true that there is inordinate and enormous delay of 12 years. The reason given therefor also may not be strictly speaking sufficient to condone the delay but then the substantive cause of justice requires that the matter should be decided on merits, especially when during all these 12 years, no progress is made in the suit. It is not that the suit is decided or is at advance stage of hearing, so that prejudice would be caused to the respondent, if the written statement is permitted to be brought on record. Therefore, if the written statement is allowed to be brought on record, the matter can be decided on merits instead of being decided on technical grounds. Hence, considering peculiar facts of this case only, the delay deserves to be condoned and the written statement needs to be brought on record."

10. In ***Shaikh Salim Haji Abdul Khayumsab Versus Kumar and others, (2006) 1 Supreme Court Cases 46***, the Honourable Supreme Court held that, provision of Order VIII, Rule 1 of the CPC and proviso thereto is not mandatory and the same is directory. It is held thus,

"10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and

specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

11. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer."

These rulings cited by the learned Advocate for the petitioners support the case of petitioners.

11. The learned Advocate for the respondents, on the other hand, relied in ***Mehendara P. Shah Versus Gurupreet Kamaljeet and others, 2016(3) All MR 142***, wherein the application for setting aside no written statement order was filed at the time when the suit was posted for pronouncement of judgment. Hence, this Court held that, the application made at belated stage without even enclosing the written statement and the inaction of defendants disentitles them from protection under Section 5 of the Limitation Act, 1963.

Such are not the facts of the case in hand.

12. ***The Gujrat Maritime Board Versus G. C. Pandya, 2015 All SCR 2257***, relied on by the learned Advocate for the respondents, is also on different point. In that case, Honourable Apex Court has considered that "non filing of written statement by

defendant though it was served and was also represented by its counsel. No question of framing issues arises and court could have pronounced judgment under Order VIII, Rule 10 of the CPC".

This ruling does not help the respondents in any manner.

13. For the afore-stated reasons, the writ petition deserves to be allowed. Hence, the following order :-

ORDER

- I. The Writ Petition is allowed in terms of prayer clause 'B'.
- II. The impugned common order below Exhibits No. 44 and 46, passed by the learned Civil Judge, Junior Division, Patoda, District Beed, in Regular Civil Suit No. 83 of 2014, dated 23-11-2019, is quashed and set aside.
- III. The trial Court to proceed from the stage of filing written statement by petitioners-original defendants.
- IV. Rule is made absolute in the above terms with costs of Rs.10,000/- (Rs. Ten Thousand) imposed on the petitioners to be paid jointly and severally by the petitioners-defendants to the respondents-plaintiffs within a period of four weeks from today in the trial Court.

**(NITIN B. SURYAWANSHI)
JUDGE**