

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

**WRIT PETITION NO.3655 OF 2018
WITH
CIVIL APPLICATION NO.13508 OF 2019**

Pralhad Rajaram Patil,
Age : 61 years, Occ. Agri.,
r/o. At post, Karnji,
Tq. Bodwad, Dist. Jalgaon

..Petitioner

Vs.

Pralhad Ramdas Budukhale,
Age : 48 years, Occ. Service,
r/o. Flat No.9, Snehlata Apartment,
Chatrapati Square/Vijay Square,
Garkheda, Aurangabad
and others

..Respondents

Mr.G.V.Wani, Advocate for petitioner

Mr.B.R.Warma, Advocate for respondent nos.1 to 3, 7 to 9

**CORAM : R.G. AVACHAT, J.
DATE : FEBRUARY 02, 2021**

PER COURT :-

The challenge in this Writ Petition is to the order dated 16.12.2017 passed by learned Civil Judge, Senior Division, Bhusawal, below application (Exh.80) in Special Civil Suit No.97 of 2014..

2. The application (Exh.80) was moved by the petitioner (defendant no.2 in the suit) for setting aside the order of "no written statement" dated 20.1.2012. Learned Judge was pleased to reject said application on the ground that the petitioner was served with summons of the suit in July, 2012. The petitioner appeared in the suit through his Advocate. There is delay in preferring the application. No ground was made out in justification for lapse on the part of the petitioner/ defendant no.2. Learned Judge, therefore, rejected the application (Exh.80).

3. Heard learned counsel appearing for the parties. Perused the impugned order.

4. The petitioner claims to be purchaser of one of the properties in the suit. It is a suit for partition and separate possession. The suit was initially on the file of the Court at Jalgaon. The suit then came to be transferred to the Court at Bhusawal. According to the petitioner, the written statement could not be filed since he was not aware of the developments in the suit.

5. Learned counsel for the respondent would, on the other hand, submit that the recording of evidence in the suit has commenced. By allowing the petitioner to file written statement, the clock cannot be put back. He, therefore, urged for dismissal of the Writ Petition.

6. The facts indicate that the suit was initially pending on the file of Court at Jalgaon. On establishment of the Court of learned Civil Judge, Senior Division, Bhusawal, the suit came to be transferred at Bhusawal. There is, therefore, substance in the contention of the petitioner that he was unaware about the developments in the suit. The petitioner claims to have purchased the land which is subject matter of the suit. If the suit is decided without affording the petitioner an opportunity to contest the same, it would result in causing injustice to him. The trial Court should have allowed the application by imposing some cost. In view of the above, interference is called for with the impugned order.

7. The Writ Petition succeeds. The impugned order dated 16.12.2017 passed by learned Civil Judge, Senior Division, Bhusawal, below application (Exh.80) in Special Civil Suit No.97 of 2014 is set aside. The trial Court shall allow the petitioner herein, to file his written statement, subject to costs of Rs.5,000/-, to be deposited in the trial Court. The amount of costs be paid to the plaintiffs.

8. In view of disposal of Writ Petition, pending Civil Application stands disposed of.

[R.G. AVACHAT, J.]

KBP