

1. By consent, heard finally at admission stage.
2. The petitioners-plaintiffs have instituted the suit bearing R.C.S. No. 192 of 2001 for partition and separate possession. Though respondent No.4 (original defendant No.4) was duly served with the suit summons as per the bailiff report vide Exh.16, he remained absent and therefore, by order dated 13.6.2002 the trial court has directed that the suit be proceeded *exparte* against him alongwith other similarly situated defendants.
3. Learned counsel for the petitioners submits that almost 16

years thereafter the respondent-original defendant No.4 has filed an application Exh.157 for setting aside the said *exparte* order and the trial court without considering such an inordinate delay has allowed the application by imposing cost of Rs.2000/-.

4. Learned counsel for the petitioners placed his reliance on the judgment of the Supreme Court in the case of ***Atcom Technologies Limited vs. Y.A. Chunawala and Co. reported in (2018) 7 SCALE 35*** wherein the Supreme Court has observed that in terms of the provisions of Order VIII Rule 1 of Civil Procedure Code, 1908, the defendant is obliged to present a written statement of his defence within thirty days from the date of service of summons and the proviso thereto enables the Court to extend the said period up to ninety days from the date of service of summons for sufficient reasons.

5. Learned counsel for the petitioners submits that there are no averments in the application about the reasons for causing such an inordinate delay in filing application Exh.157 for setting aside the *exparte* order.

6. Learned counsel for respondent No.4 (original defendant No.4) submits that the petitioners-plaintiffs have instituted the suit for partition and separate possession and the respondent (defendant No.4) is one of the members of the joint family. In a suit for partition

and separate possession, all the parties to the suit, who are members of the joint family are also the plaintiffs. Learned counsel submits that the trial court has rightly allowed the application Exh.157 and hearing of the suit is expedited. Respondent-defendant No.4 has also filed his written statement alongwith the application Exh.157. The writ petition may be dismissed.

7. I agree that there is an inordinate delay in filing application Exh.157 for setting aside the *exparte* order passed way back in the year 2002. In para No.5 of the impugned order, the trial court has observed that the respondent (defendant No.4) is one of the members of the joint family. In the given set of facts and considering the contentions raised in the written statement, the learned Judge has observed that the contention of respondent (defendant No.4) is required to be taken on record. In view of the same, even though learned counsel for the petitioners has placed his reliance on the judgment in the case of ***Atcom Technologies Limited vs. Y.A. Chunawala and Co. (supra)***, wherein the Supreme Court has made observations by referring the provisions of Order VIII Rule 1 of C.P.C.. However, considering the peculiar facts of the present case, I am not inclined to interfere in the order passed by the trial court so far as setting aside of the *exparte* order against the respondent (defendant No.4) is concerned. However, considering the inordinate delay as referred above, it would be just and proper if the costs of Rs.2000/- is raised up to Rs.30,000/- to be paid by the respondent

(original defendant No.4) to the petitioners-plaintiffs within four weeks from the date of this order. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby partly allowed.
 - II. The impugned order dated 28.3.2019 passed by the learned Joint Civil Judge, Junior Division, Parner below Exh.157 in Regular Civil Suit No. 192 of 2001 is hereby modified to the extent of payment of costs and instead of Rs.2000/-, respondent No.4 (original defendant No.4) shall pay costs of Rs.30,000/- to the petitioners-plaintiffs within a period of four weeks from the date of this order.
 - III. The rest of the impugned order is not interfered with.
 - IV. The writ petition is accordingly disposed of.
8. Considering the old pendency of Regular Civil Suit No. 192 of 2001, the trial court is hereby directed to dispose of the suit as expeditiously as possible.

(V. K. JADHAV, J.)

rlj/