

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.8231 OF 2020

Bhagwan s/o Tukaram Rathod
and another

... PETITIONERS

VERSUS

Devavrat s/o Uttamrao Khogare

... RESPONDENT

.....
Shri H.V. Tungar, Advocate for petitioners
Shri S.P. Brahme, Advocate for respondent
.....

CORAM : R. G. AVACHAT, J.

DATE : 28th JANUARY, 2021

ORDER :

The petitioners are original defendants in a suit, being Special Civil Suit No.24/2015, on the file of Civil Judge, Senior Division, Ambajogai. It is a suit for specific performance of agreement for sale. The suit has been filed on 2/11/2015. The petitioners appeared in the suit in response to the suit summons. They, however, could not file their written statement. The learned Judge, therefore, passed order "No Written Statement" against the petitioners. The petitioners, therefore, preferred application Exhibit 50 for setting aside the order of No Written Statement. The learned

Judge, after hearing the parties to the suit, was pleased to reject the said application. The petitioners are, therefore, before this Court.

2. Learned counsel for the petitioners would submit that, the petitioner No.1 has been suffering from Cancer for long. Due to ill health, he could not approach his Advocate to give instructions for filing of the written statement. The petitioner No.2 is wife of petitioner No.1. She has been made a party to the suit only on the ground of having been residing on the suit land along with petitioner No.1. She is not a party to the agreement for sale. She could not, therefore, be expected to give instructions for filing of written statement. According to learned counsel, if the impugned order is not set aside, great injustice would be caused to the petitioners.

3. Shri Brahme, learned counsel for the respondent/plaintiff would, on the other hand, submit that, so many applications were moved on behalf of the petitioners seeking time to file the written statement. The learned counsel referred to copies of such applications filed on record. According to him, the petitioner No.2 could have given instructions for preparing the written statement. Recording of evidence for plaintiff commenced. The learned trial Judge has passed well reasoned order. The petitioners were found to be

not diligent when number of applications were filed on their behalf, the same indicates, they were in contact with their Advocate and watching the progress in the suit. According to learned counsel, no case is made out for interference with the impugned order.

4. It is a suit for specific performance of agreement for sale allegedly executed by the petitioner No.1. The subject matter of the agreement is agricultural land measuring 1 Hectare 60 R. The petitioner No.2 is not a party to the agreement. She is a woman. She has been made a party to the suit on the ground of having been obstructing the respondent/ plaintiff in his possession over the suit land. The petitioner No.2 being not an executant of the agreement for sale, might not have been in the know of all the facts so as to give the Advocate instructions to prepare the written statement. Number of medical papers have been produced on record to indicate that the petitioner No.1 has been suffering from Cancer. The medical papers on the record are from the period from January 2014 to December 2019. True, number of applications have been filed on their behalf by their Advocate appearing before the trial Court. It might be goodness of the Advocate representing the petitioners to move such applications. If the suit is decreed ex-parte, same would necessarily be prejudicial to the interest of the

petitioners. There appears to be substance in the contention of the petitioners that they could not approach their Advocate due to ill health to give instructions for preparing the written statement. In the interest of justice, therefore, the impugned order needs to be set aside. The writ petition is allowed in terms of the following order :

5. The order dated 11/11/2020, passed by Civil Judge, Senior Division, Ambajogai below Exh.50 in Special Civil Suit No.24/2015 is hereby set aside. The said application Exh.50 is allowed. The petitioners/ defendants to file their written statement, if not already placed before the trial Court within a period of four weeks.

6. The petitioners to pay the respondent Rs.10,000/- towards costs. The costs to be paid in the trial Court.

7. The trial Court is requested to decide the suit within a period of ten months from the date of receipt of copy of this order.

**(R. G. AVACHAT)
JUDGE**

fmp/-