

Mr.BDP-SPS

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13503 OF 2018**

Smt. Ujwala Trymbak Tile and Anr.

....Petitioners.

V/s

Smt. Lankabai Trymbak Tile & Ors.

....Respondents

Mr. Sachin Gite for the Petitioners.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 2, 2021

P.C.:-

1] After having heard Mr. Gite, learned Counsel for the Petitioners/ original Defendant Nos.4 and 5, this Court on 2/5/2019 directed the Petitioners to deposit costs of Rs 25,000/- before the Court below, which, I am informed, is already deposited.

2] Notice issued pursuant to the aforesaid order has been refused to be accepted by Respondent No.1, as is reflected from Bailiff's report.

3] In that view of the matter, it has to be held that service on

Respondent No.1 is complete.

4] Mr. Gite, learned Counsel for the Petitioners/original Defendant Nos. 4 and 5 would urge that Respondent No.1 is the only surviving Plaintiff and prayer for partition is made in the Plaint.

5] As far as present Petitioners are concerned, they claimed to be in blood relation of the Plaintiff and that being so, their status is that of co-plaintiffs/defendants in a partition suit. As such, according to him, even if there is some delay in filing Written Statement, the order impugned needs to be set aside by granting permission in favour of the Petitioners.

6] The aforesaid contentions are not controverted.

7] From the record of the Trial Court, it appears that Petitioner/Defendant No.4 appeared on 1/3/2017, whereas Petitioner/Defendant No.5 appeared on 17/10/2015. It appears that the Petitioners have moved an application-Exhibit-48 immediately for setting aside "No WS" order with a prayer for condonation of delay.

The Court below was of the view that there are no justifiable reasons for condoning delay and for setting aside “No WS” order and hence rejected the application-Exhibit-48 vide order impugned dated 6/4/2018.

8] However, it can be noticed that in a suit for partition, considering status of the Petitioners/Defendants as that of co-plaintiffs, their attempt to file Written Statement by immediately moving an application for condonation of delay and for setting aside “No WS” order prima facie demonstrates bonafides.

9] In that view of the matter, application-Exhibit-48 is allowed, thereby quashing the order impugned dated 6/4/2018, thereby condoning delay and setting aside “No WS” order.

10] Petitioners undertake to place on record Written Statement within a period of two weeks from today, failing which Petitioners. right to file Written Statement shall cease to operate. The Respondent/Plaintiff will be entitled for costs of Rs 10,000/- from the amount of Rs 25,000/- deposited by the Petitioners. The balance

amount of Rs 15,000/- be diverted to Bar Library, Nashik Bar Association.

11] Petition is disposed of in the aforesaid terms.

(NITIN W. SAMBRE, J.)