

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

WRIT PETITION NO.1545 OF 2022

1. Shri Rajendra Punju Pakhale,
Age 52 years, Occupation Business,
R/o Adva Bazar, Chalisgaon, Dist. Jalgaon.
2. Sau Vandana Sachin Morankar,
Age 27 years, Occu. Household,
R/o. As above.
3. Shri. Sharad Balkrushna Morankar (Wani),
Age 55 years, Occu. Business,
R/o. As above.
(Ori. Defendant Nos.1 to 3) ..Petitioners

Versus

1. Shri. Hari Tryambak Jadhav,
Age 56 years, Occu. Agri. & Labour,
R/o Songaon (Khede), Tal. Chalisgaon,
Dist. Jalgaon.
2. Smt Santribai Raghunath Jadhav,
Age 69 years, Occu. Household,
R/o Shivtanda, Tal. Kannad, Dist. Aurangabad.
3. Smt. Rakhmabai Bhatu Rathod,
Age 66 years, Occu. Household,
R/o Nagad, Tal. Kannad, Dist. Aurangabad.
4. Sau Jijabai Navnath Rathod,
Age 50 years, Occu. Agri.
R/o Bhilaritanda, Tal. Kannad, Dist. Aurangabad.
5. Sau Sodrabai Gorakh Rathod,
Age 36 years, Occu. Household,
R/o Shivtanda, Tal. Kannad, District Aurangabad.
(Ori. Plaintiff Nos.1 to 5)
6. Shri. Dhanraj Tryambak Jadhav,
Age 45 years, Occu. Agri.

R/o Songaon (Khede), Tal. Chalisgaon,
Dist. Jalgaon (Ori. Defendant No.4) ..Respondents

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Mr. R. S. Shinde h/f Mr. D. B. Thoke, Advocate for the Petitioners.
Mr. H. P. Jadhav, Advocate for Respondent Nos.1 to 3.

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CORAM : SANDEEP V. MARNE, J.
DATED : 23rd NOVEMBER, 2022.

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

2. By the petition petitioners assail the order dated 22.11.2021 passed by the Joint Civil Judge, Junior Division (Court No.1), Chalisgaon thereby rejecting petitioners' application for setting aside 'No WS' order.

3. The defendants had appeared in the suit on 10.10.2017 and failed to file their written statement for a considerable time. Therefore, on 22.02.2018 'No WS' order was passed and the suit was fixed for evidence. The plaintiffs examined themselves and two additional witnesses and the evidence of plaintiffs was closed on 16.03.2020. The suit was adjourned for evidence of defendants on 05.08.2021. Since defendants failed to lead any evidence, their evidence was closed on 08.09.2021. The suit was adjourned for final argument on 29.09.2021, when defendants suddenly appeared before the Court and filed application dated 29.09.2021 seeking setting aside of 'No WS' order. There is a delay of three years and seven months on the part of petitioners in seeking to file written statement.

4. I have gone through the application filed by petitioners seeking setting aside 'No WS' order. The only reason cited in that application is that defendants were busy in their business and agriculture and therefore could not meet their advocate for the purpose of filing written statement. The application was resisted by plaintiffs by filing their reply. While seeking rejection of the application, plaintiffs also made an alternate prayer that in the event of the application of defendants being allowed, costs of Rs.20,000/- be imposed on them. The Trial Court has proceeded to reject the application by order dated 22.11.2021.

5. The suit is for partition. The defendants claimed to be bonafide purchasers of the properties. In these circumstances, if the suit of plaintiffs is decided without considering defence of defendants, the same would result in loss of title and possession of the suit properties for defendants. One may also bear in mind that, after March 2020 till the application was filed by petitioners on 20.09.2021, Covid-19 pandemic situation was prevalent. This would mitigate the delay on the part of petitioners to some extent. The petitioners are willing to pay costs to plaintiffs in the event of they being granted an opportunity to file their written statement. The plaintiffs themselves had prayed for imposition of costs of Rs.20,000/- in the event of application of defendants being allowed. The costs incurred by plaintiffs have obviously gone up as they are made to defend the present petition as well. Even otherwise, for casual approach shown by defendants they are required to be saddled with exemplary costs.

6. Considering the above position, I am of the view that ends of justice would meet if the defendants are compensated by

awarding exemplary costs to them. I, therefore, proceed to pass following order:

ORDER

A. The order dated 22.11.2021 passed by the Joint Civil Judge, Junior Division (Court No.1), Chalisgaon on application at Exhibit-53 in RCS No.123/2017 is set aside.

B. The petitioners' application at Exhibit-53 stands allowed in terms of prayers made therein.

C. The petitioners shall pay costs of Rs.1,00,000/- to respondents within a period of four weeks from today. Failure to pay costs within stipulated time would result in restoration of the order dated 22.11.2021 passed by the Trial Court.

7. Writ Petition is accordingly allowed. Rule is made absolute in above terms.

(SANDEEP V. MARNE)
JUDGE