

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

WRIT PETITION NO. 5584 OF 2016

Yuvraj Pandurang Barbade and others .. Petitioners

Versus

Mohiniraj Bhagwan Barbade .. Respondent

Shri N. C. Garud, Advocate for the Petitioner.

Shri V. P. Latange, Advocate for the Respondent.

CORAM : SANDEEP V. MARNE, J.

DATE : 30TH NOVEMBER, 2022.

FINAL ORDER :

. By this petition, the petitioner challenges order dated 16th March, 2016 passed by the Civil Judge Junior Division, Karjat rejecting petitioners' application at Exhibit 20 in R. C. S. No. 132 of 2013 for setting aside "No W.S." order.

2. Defendant Nos. 1 to 10 were served with the suit summons on 17.09.2013. The time available for filing of written statement was upto 16.12.2013. The defendant Nos. 1 to 10, however, failed to file written statement within time. They went on filing applications in casual manner seeking extension of time. The Trial Court accordingly granted extension on 25.09.2013, 22.11.2013, 10.02.2014, 19.04.2014 and 11.07.2014. Despite grant of about six such opportunities, defendant Nos. 1 to 10 did not bother to file their written statement. Ultimately the Trial

Court directed that the suit would proceed without written statement. After more than a year, thereafter the defendant Nos. 1 to 10 woke up from their deep slumber and moved an application dated 07th August, 2015 for setting aside of 'No W.S.' order. That application is rejected by order dated 16.03.2016.

3. This Court while issuing notice in the present petition on 20th June, 2016 had directed the petitioners to deposit an amount of Rs. 15,000/- in the Trial Court. Learned counsel for the petitioners submits that in pursuance of that order, petitioners have deposited an amount of Rs. 15,000/- before the Trial Court. This Court stayed the proceedings in the suit by order dated 20.06.2016, on account of which till date suit has not progressed further.

4. No doubt, petitioners have extremely casual in defending the suit. They were granted more than adequate opportunities to file written statement. They, however, failed to file their written statement. Even after passing of 'No W.S.' order, they did not bother to seek setting aside of that order for further period of one year. In such circumstances, ordinarily this Court would be loath in interfering in the order passed by the Trial Court. However, only because proceedings of the suit have been stayed since 2016 and the petitioners have already deposited an amount of Rs. 15,000/- in pursuance of order dated 20.06.2016, I am inclined to grant one indulgence to the petitioners.

5. Accordingly the writ petition is allowed. Order dated 16th March, 2016 passed by the Civil Judge Junior Division, Karjat on application at Exhibit 20 in R.C.S. No. 132 of 2013 is set aside. The petitioners have already tendered their written statement in the Trial Court. Same shall be taken on record. The respondent/plaintiff shall be at liberty to withdraw the amount of Rs. 15,000/- deposited by the petitioners/defendants before the Trial Court along with accrued interest. The petitioners to pay further cost amount of Rs. 10,000/- (Rs. Ten thousands only) to the respondent/plaintiff within a period of four (04) weeks from today. Amount of Rs. 10,000/- to be deposited within stipulated time in the Trial Court with liberty to the respondent/plaintiff to withdraw the same. Needless to state that failure on the part of the petitioners to deposit further amount of Rs. 10,000/- within stipulated period would result in dismissal of the present petition and revival of the order dated 16.03.2016. Since the suit is pending since long, it is desirable that the Trial Court expedites hearing of the suit and to make an endeavour to decide the same as expeditiously as possible and preferably by the end of year 2013.

[SANDEEP V. MARNE, J.]

bsb/Nov. 22