

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

WRIT PETITION NO. 1106 OF 2021

Sattarkha s/o Shabbirkha Pathan & Anr. ... Petitioners

Versus

Ganesh s/o Jagannath Girham & Ors. ... Respondents

...
Mr. S. B. Yawalkar, Advocate for the Petitioners

...
CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23rd August, 2022

PER COURT :-

1. The learned Advocate for the petitioner, at the outset, not pressed prayer clause 'C' & 'D'.

2. The petitioners/original defendant nos.3 & 4 in Regular Civil Suit No.61/2014 are aggrieved by the order dated 15-01-2020, passed below Exhibit-41 & Exhibit-43, by the learned 2nd Joint Civil Judge, Junior Division, Gangapur, District Aurangabad, thereby rejecting condonation of delay in setting aside 'no written statement order' and refusing to accept the written statement filed by the defendants, along with the applications.

3. The respondent no.1/original plaintiff filed suit for partition and separate possession as well as for setting aside the sale deeds i.e. DB No.2882/2012 dated 04-06-2012 and DB No.3968/2012

dated 02-08-2012 and also for setting aside decree passed in Regular Civil Suit No.469/2011, as well as mutation entries. A permanent injunction is also sought in respect of suit property, which is an agricultural land.

4. Though defendants appeared, they failed to file written statement, due to which, 'no written statement order' was passed against the petitioners/defendant nos.3 & 4 on 09-06-2014.

5. The petitioners/defendants therefore filed application (Exhibit-43) for setting aside 'no written statement order' on the ground that due to communication gap between the petitioners and their advocate, 'no written statement order' passed against the petitioners was not known to them. The petitioners further contended that the petitioners have no right interest or ownership in the suit property. However, it is expedient to bring on record the facts that the suit property is sold by the petitioners to third party before filing of the present suit. Hence, the petitioners prayed for setting aside 'no written statement order' passed against them. The said application though filed on behalf of original defendant nos.2, 3 & 4, defendant no.2 has not signed the same.

6. Along with the said application, application (Exhibit-41) is filed seeking condonation of delay of about six years in filing application (Exhibit-43) for setting aside 'no written statement

order'. The petitioners have also filed their written statement along with the said application.

7. By common order passed below Exhibits-41 & 43, the Trial Court has rejected both applications. The said order is impugned in the present petition.

8. The reasons given by the petitioners did not weigh with the Trial Court and the Trial Court has rejected the applications on the ground that reasons given by the petitioners are not satisfactory and not a single reason for delay is mentioned.

9. Heard the learned Advocate for the petitioners. Though served, none appears for the respondents.

10. No doubt there is an inordinate delay of about six years in filing the application Exhibit-43. However, rules of procedure are based on the principles of natural justice. A reasonable and fair opportunity needs to be given to the petitioners to plead and to contest their case. The Trial Court ought to have adopted a practical approach and by imposing costs on the petitioners ought to have allowed the applications. The approach of the Trial Court while rejecting the applications is too technical.

11. In light of the above, following order is passed:

ORDER

(i) The writ petition is allowed.

(ii) The impugned order dated 15-01-2020, passed by the 2nd Joint Civil Judge, Junior Division, Gangapur, District Aurangabad below Exhibit-41 and Exhibit-43 in Regular Civil Suit No.61/2014, is hereby quashed and set aside.

(iii) The applications Exhibit-41 & Exhibit-43 are allowed.

(iv) The amount of cost of Rs.25000/- deposited by the petitioners in terms of order passed by this Court on 20-01-2021, be paid to the respondent/original plaintiff.

12. Considering the fact that the suit is of the year 2014, the Trial is expedited.

[NITIN B. SURYAWANSHI, J.]

Sameer