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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9841 OF 2017

Balaji Mohanrao Salunke

PETITIONER

VERSUS

Meerabai Ashok Natekar and Others

RESPONDENTS

.....

Mr. Santosh N. Patne, Advocate for the petitioner

Mr. V. D. Gunale, Advocate for respondents No. 1 and 2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd JULY, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the learned Civil Judge, Junior Division, Lohara below Exhibit-40 in Regular Civil Suit No. 6 of 2013, thereby rejecting the application filed by the petitioner for setting aside "no written statement" order.

2. Having heard the learned advocate for the petitioner and learned advocate for respondents No. 1 and 2, and after going through the documents placed on record, admittedly, the petitioner appeared in the suit, however, failed to file written statement within the stipulated time. "No W. S." order was passed against the petitioner on 18th March, 2014. The

petitioner, by filing application Exhibit-40, prayed for setting aside the "no w.s." order contending that he was out of station due to work and, therefore, he could not file written statement within the stipulated time. Therefore, it was prayed that "no w.s." order passed against the petitioner may be cancelled. The application was opposed by the respondent – plaintiffs and the Trial Court has rejected the application Exhibit-40 observing that no sufficient explanation is given by the petitioner for not filing the written statement within the stipulated time.

3. The suit is filed by the respondent – plaintiffs for partition and separate possession of immovable properties. Valuable rights of the parties are involved in the matter. In the circumstances, the Trial Court ought to have allowed the application filed by the petitioner, by imposing suitable costs for the delay caused in filing the written statement.

4. It is a settled legal position that our laws of procedure are grounded on a principle of natural justice which requires that no one should be condemned unheard, that decision should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. One cardinal principle to be observed is that a party has a right to

appear and plead his cause on all occasions when that cause comes on for hearing. It follows that the parties should not be deprived of that right. It is also a settled legal position that as far as possible, no proceeding in a court of law should be conducted to the detriment of a person in his absence.

5. In the light of the fact that substantive rights of the petitioner are involved in the suit, the petitioner – defendant needs to be given fair opportunity to contest the suit on merits and for that written statement is necessary.

6. In view of aforesaid, the impugned order dated 15th April, 2017 passed below Exhibit-40 in Regular Civil Suit No. 6 of 2013 by Civil Judge, Junior Division, Lohara is quashed and set aside. Application Exhibit-40 is allowed. Costs of Rs.10,000/- deposited by the petitioner in the Trial Court be paid to the respondents No. 1 and 2 – plaintiffs.

7. The petitioner shall file his written statement within a period of two weeks from the date of receipt of the writ of this order. Considering the fact that the suit is of the year 2013, hearing of the same is expedited.

[NITIN B. SURYAWANSHI]
JUDGE