

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

WRIT PETITION NO. 11426 OF 2018

**MOHAMMAD FERAZ ABDUL SATTAR
VERSUS
KACHRULAL RUPCHAND BARLOTA THROUGH LRS UGMADEVI
KACHRULAL BARLOTA AND OTHERS**

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Advocate for Petitioner : Mr. Mane Dhairyashil M
Advocate for Respondent Nos. 1-B, 1-E and 1-F and 1-A to 1-D : Mr. Ameet R.
Vaidya

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**CORAM : NITIN B. SURYAWANSHI, J.
DATE : 28th APRIL, 2022.**

P. C.

1. The Petitioner is aggrieved by the order passed by the learned Joint Civil Judge, Senior Division, Jalna below Exhibit-143 in Regular Civil Suit No. 541/2012, thereby rejecting the application filed by the Petitioner/Original Defendant No.1 for setting aside 'no written statement order' (no W.S. order) passed against him.

2. The suit is filed by the Respondents/Original Plaintiffs for permanent injunction and also for mandatory injunction. The Petitioner filed the said application after a delay of more than five

years, contending that he appeared in the Court after service of summons of the suit. Thereafter, he met Original Plaintiff and inquired with him about suit. At that time the Respondent/Plaintiff told him that he made him as a formal party and the suit will be compromised with him. The Petitioner believing the same, did not file written statement. After the death of Original Plaintiff, his legal representatives contested the suit against the Petitioner/Defendant No.1.

3. The Trial Court rejected the application holding that no details are given by the Petitioner as to when he had a talk with the Original Plaintiff. No documentary evidence regarding the proposed compromise between the Original Plaintiff and the Petitioner is filed on record, there was ample opportunity to the Petitioner to file written statement on record but he failed to do so. Therefore, accepting the written statement after expiry of five months from the appearance of Defendant No.1, is contrary to the provisions of Order-VIII, Rule-1 of the Civil Procedure Code. No exceptional case is made out by the Defendant No.1. Hence the application is rejected.

4. Heard the rival submissions of the learned Advocate for the Petitioner and the learned Advocate for the Respondents.

5. The learned Advocate for the Respondents vehemently opposed the prayer of the Petitioner contending that no sufficient and reasonable ground is made out by the Petitioner for setting aside the no W.S. order and accepting the written statement.

6. True it is that the Petitioner has belatedly approached the Trial Court after a delay of more than 65 months by filing application, seeking setting aside of 'no W.S.' order. The reason given by the Petitioner in his application Exhibit-143, appears to be probable and the Trial Court ought to have allowed this application filed by the Petitioner by imposing costs. Reasonable and fair opportunity needs to be given to Petitioner to defend his case. In that view of the matter, this Court is inclined to allow the Writ Petition by awarding costs of Rs.30,000/- to the Petitioner. Hence, the following order.

ORDER

a. The Writ Petition is allowed in terms of prayer clause 'A'.

- b. The costs of Rs.30,000/- deposited by the Petitioner in the Trial Court, shall be paid to the Respondent/Original Plaintiff.
- c. Taking into consideration the fact that the suit is of the year 2012, the Trial Court shall decide the same within a period of six months from the date of receipt of this order.

[NITIN B. SURYAWANSHI, J.]

Najeeb..