

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

924 WRIT PETITION NO.8928 OF 2014

GOVIND GANGADHARRAO JADHAV
VERSUS
JAIRAM KISHANRAO PATIL AND OTHERS

...

Advocate for Petitioner:
Mr. Rahil Kazi h/f. Mr. Katneshwarkar P. R.

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CORAM: S. V. GANGAPURWALA, J.

DATE: 13th JANUARY, 2022

PER COURT:

1. Though, the Original Plaintiffs / Respondents No. 1 to 3 are served, none appears for them.

2. The present Respondents No. 1 to 3 / Original Plaintiffs have filed Suit for partition, separate possession, so also, declaration with regard to the adoption. The Suit proceeded further. The present Petitioner / Defendant No. 1, though was served with the summons did not remain present and appeared before the Court after 2 witnesses were examined by the Petitioner and 2 years after the service of the summons upon him. The present Petitioner filed an application Exhibit-161 for

setting aside the ex-parte order. The said application is rejected.

3. The learned Counsel for the Petitioner submits that the present Petitioner had instructed his brother / Original Defendant No. 2 to appear and contest the Suit also on his behalf but he did not do so. He had paid the miscellaneous expenses of the same to the Defendant No. 2. However, as dispute arose between the Petitioner and the Original Defendant No. 2, the Original Defendant No. 2 did not prosecute the Suit for the Petitioner.

4. This Court under order dated 08.10.2014 directed the Petitioner to deposit Rs.10,000/- in the Trial Court. The learned Counsel for the Petitioner submits that the Petitioner has deposited the amount of Rs.10,000/- in the Trial Court as directed by this Court under order dated 08.10.2014.

5. This Court had stayed the further proceedings of the Suit under order dated 08.10.2014. The learned Counsel for the Petitioner submits that the order staying the Suit is still in force and the Suit is stayed.

6. The Suit is a substantive Suit for partition and separate possession and also declaration with regard to the adoption, I deem it appropriate to grant one more opportunity to the Petitioner. The Petitioner as per the submission of the learned Counsel for the Petitioner has also shown his *bona fides* by depositing Rs.10,000/- in the Trial Court as per the order dated 08.10.2014.

7. In view of that, the impugned order is quashed and set aside. The application Exhibit-161 filed by the Petitioner is set aside on condition that the Petitioner deposits further amount of Rs.10,000/- (Rs. Ten Thousand only) within a period of four (04) weeks from today in the Trial Court. The deposit of amount is condition precedent. The Petitioner shall file his Written

Statement within a period of four (04) weeks from today. Failure to file the Written Statement within four (04) weeks from today shall result in forfeiting the right of the present Petitioner to file the Written Statement.

8. With the aforesaid observations and directions, the Writ Petition is allowed.

9. The Writ Petition stands disposed of.

[S. V. GANGAPURWALA, J.]

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