

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

972 WRIT PETITION NO.52 OF 2020
WITH CA/16064/2022 IN WP/52/2020

BABANRAO RAJARAM PUND
VERSUS
SANDESH BHIVSAN WAGH AND OTHERS

Advocate for Petitioner : Mr P.S. Pawar
Advocate for Respondent No 1 and 2 : Mr P.P. Patni

CORAM : SANDEEP V. MARNE, J.
DATE : 2nd DECEMBER, 2022

PER COURT :

1. The writ petition is filed challenging the order dated 29.11.2019 passed by the Jt. Civil Judge Senior Division, Aurangabad rejecting petitioner's application at Exh. 45 for setting aside "No Written Statement" order.

2. Petitioner is defendant No.1 in the suit, who has filed application seeking adjournment for filing written statement. It was rejected on 3rd July, 2017. The Court therefore proceeded to pass "No W.S." order on 17.07.2017. Thereafter, petitioner/defendant No.1 remained negligent for substantial period of time during which plaintiff adduced his evidence and later closed his evidence. The evidence of the defendant was closed and the final arguments of the plaintiff in the matter were concluded on 06.09.2018. The suit itself could have been decided in the year 2018, had the defendant No.1 not preferred the application on 01.10.2018 under section 33 and 34 of the Bombay Stamp Act. On account of filing of those applications, the hearing of the suit was deferred and taking disadvantage

of that position, petitioner moved an application on 23rd July, 2019 for setting aside the "No W.S." order.

3. The above conduct on the part of petitioner/defendant No.1 shows that the only intention behind filing the application at Exh. 45 was to delay the decision in the suit.

4. `Learned counsel appearing for respondent Nos. 1 and 2 opposes the petition and support the order passed by the trial court.

5. Though the conduct of petitioner/defendant No.1 warrants dismissal of his petition, it must also be noted that the present petition is pending since 21st December, 2019 and as per order dated 03.01.2020, the proceedings of the suit has been stayed. In these circumstances, it would be in the interest of justice to grant one more opportunity to petitioner/defendant No.1 to file written statement. Obviously, filing of written statement at this situation, set the entire clock back where the suit will have to be re-opened for evidence. In these circumstances, petitioner/defendant No. 1 is required to be saddled with exemplary costs so as to compensate the plaintiffs.

6. Accordingly, writ petition is allowed. The order dated 29.11.2019 passed by the Jt. Civil Judge, Senior Division, Aurangabad is set aside and petitioner /defendant No.1 application at Exh. 45 stands allowed in terms of the prayers made therein.

7. The written statement tendered by defendant No.1 shall be taken on record. Petitioner to pay costs of Rs. 25,000/- to the respondents within a period of four weeks from today. Costs to be deposited in the trial court. Respondent Nos. 1 and 2 will be at liberty to withdraw the amount of costs.

8. Pending Civil Applications are disposed of.

[SANDEEP V. MARNE, J.]

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