

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

WRIT PETITION NO.12528 OF 2019

**SANJAY BHAGWAN BUDHWANT AND ANOTHER
VERSUS
PAWAN CHANDULAL KHEMANI AND ANOTHER**

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Advocate for Petitioners : Mrs. Charuta Sunil Deshmukh

Advocate for Respondent No.1 : Mr. A. A. Yadkikar

Advocate for Respondent No.2 : Mr. S. S. Bora

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 08th SEPTEMBER, 2022

PER COURT :

1. Challenge in this petition is to order dated 05/08/2019, passed by learned 5th Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-55 in Special Civil Suit No.88/2017, thereby rejecting application filed by petitioners.

2. The suit is filed by respondent No.1/original plaintiff for declaration of title, declaration of document of petitioner No.1 as void and not binding on him and for specific performance and permanent injunction in respect of suit property.

3. In said suit, petitioners/defendant Nos. 2 and 3 failed to file written statement within stipulated period. Hence, trial Court ordered the suit to proceed without written statement and say of petitioners. Petitioners, therefore, filed application Exhibit-55

praying to set aside 'no written statement' order on the ground that there are number of litigations pending between plaintiff and defendant No.1 and it was necessary for petitioners to collect all disputes and documents to that effect, due to which petitioners could not file their written statement within stipulated time. Said application was resisted by respondent No.1/original plaintiff contending that the application is not legal and the same is filed after two years from the date of passing of 'no written statement' order, hence, there is inordinate delay. Trial Court, therefore, has rejected the application. Hence, present petition.

4. I have carefully considered rival submissions of learned advocate for petitioners and learned advocates for respondents. Perused the grounds raised in writ petition and documents filed alongwith petition as well as impugned order.

5. This Court is of opinion that impugned order cannot be sustained in the facts of the present case.

6. Admittedly, in the suit dispute is about immovable property and petitioners are *bona fide* purchasers of suit property. It is also admitted position on record, which is clear from pleadings of respondent No.1/plaintiff, that there is chequered history of litigations. In that view of the matter, reason assigned by

petitioners that they wanted to collect documents about previous disputes is acceptable. Trial Court appears to have adopted hyper technical approach and has denied fair and reasonable opportunity to petitioners to defend their case by filing written statement. In that view of the matter, impugned order cannot be sustained. Hence, following order :

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order is hereby quashed and set aside, subject to petitioners paying cost of Rs.30,000/- to respondent No.1/original plaintiff.
- (III) Amount of Rs.30,000/- deposited by petitioners in terms of order dated 14/10/2019, be paid to respondent No.1/original plaintiff.

(NITIN B. SURYAWANSHI, J.)