

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

WRIT PETITION NO.6030 OF 2019

**SOW. SUNITA RAMESH TATIYA
VERSUS
VILAS HIRACHAND KOTECHEA AND OTHERS**

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Advocate for Petitioner : Akash R. Ingle h/f Mr. V. V. Udhan

Advocate for Respondent No.1 : Mr. B. R. Kedar

Advocate for Respondents No. 2 & 3 : Mr. R. R. Imale

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 13th JULY, 2022

PER COURT :

1. Petitioner is aggrieved by the order dated 11/09/2018 passed by the learned Civil Judge Senior Division, Bhusawal, below Exhibit-143 in Regular Civil Suit No.52/2012, thereby rejecting the application filed by the petitioner for setting aside 'no written statement' order.

2. The petitioner is defendant No.3 in R.C.S. No.52/2012 filed by respondent No.1 for partition and separate possession of the ancestral property. The suit is filed by one brother against the father, brothers and sisters. In the said suit, the petitioner who stays at Indore in Madhya Pradesh State, received suit summons in the month of April, 2011. After receipt of the suit summons the petitioner appeared before the trial Court, however, she was assured by her brothers – other defendants that she need not

attend and they will take care of her interest in the suit, and therefore, she did not thereafter attend the suit. When father – defendant No.1 expired on 09/12/2014 and the petitioner came for his funeral and last rituals, at that time she came to know about passing of the 'no written statement' order against her. She, therefore, filed application for setting aside the 'no written statement' order. Her application is rejected on the ground that no plausible reason is given by the petitioner as to why after the marriage of her daughter she has not attended the proceedings till 09/12/2014. The petitioner has failed to clarify which documents she was collecting by consuming several years. No document is placed on record by the petitioner along with the application and therefore, the petitioner could not explain inordinate delay of seven years in approaching the trial Court.

3. Though there is an inordinate delay of seven years in filing the application before the trial Court, the same ought to have been allowed by the trial Court by imposing suitable costs. The suit is for partition and separate possession of the immovable property, in which the petitioner's interest is involved, therefore, fair opportunity needs to be given to the petitioner to contest the suit on merits. The trial Court has failed to appreciate this aspect in the proper perspective, while rejecting the application filed by the

petitioner, and therefore the impugned order cannot sustain.

4. For the aforesaid reasons, writ petition is allowed. The impugned order dated 11/09/2018 passed by the learned Civil Judge Senior Division, Bhusawal, below Exhibit-143 in Regular Civil Suit No.52/2012, is hereby quashed and set aside. Application Exhibit-143 is allowed, subject to the petitioner paying cost of Rs.10,000/- to the respondents in the trial Court.

5. It is brought to the notice of this Court that by earlier order passed by this Court on 17/06/2019, the petitioner was directed to deposit Rs.10,000/- towards cost, in the trial Court. The respondents are permitted to withdraw the said amount.

(NITIN B. SURYAWANSHI, J.)