

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4235 OF 2018

GANGASAGAR PANDURANG SHINDE @ GANGASAGAR
ASHOKRAO BHAROSE
VERSUS
RAMBHAU N GADAGE AND OTHERS

Advocate for Petitioner : Nikhilesh K. Tungar
Advocate for Respondents No. 1, 2, and 4 : Mr. P.N. Kalani

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 31st MARCH, 2022

ORDER :

1. The petitioner has challenged the order passed by the learned 2nd Joint Civil Judge, Senior Division, Parbhani, below Exhibit-20 in Special Civil Suit No. 50/2016, thereby allowing the application filed by the Respondent No 1 and 2/Defendant No. 1 and 2 for setting aside no written statement order.

2. The learned advocate for the petitioner assailed the impugned order urging that the suit summons are served on defendant No. 1 on 28.12.2016 and both the defendants appeared before the trial Court on 09.01.2017, but they failed to file written statement within 90 days. Thereafter, the matter was kept for no written statement order.

The defendants thereafter on 09.06.2017 filed application for setting aside no written statement order which is erroneously allowed by the trial Court, by ignoring the fact that the word 'shall' is used in Order VIII Rule 1 of Code of Civil Procedure, 1973, which is mandatory. In support of his aforesaid submissions, he placed reliance on A. Sathyapal and Ors., vs. Smt. Yasmin Banu Ansari and Anr. (ILR 2004 KAR 1399).

3. The learned advocate for Respondents No. 1, 2, and 4 supports the impugned order and submits that it is not in dispute that the written statement was not filed within 90 days as stipulated under Order VIII Rule 1. However, the application Exhibit-20 was filed by the defendants praying therein to set aside the no written statement order. The defendants stated in the said application that the documents relating to the suit property are old one and therefore delay was caused in preparing the written statement. Since the matter, pertains to immovable property, valuable rights of the society and its members including defendants No. 1 and 2 are involved, hence no written statement order passed on 17.04.2017 may be set aside and written statement filed by the defendants No. 1 and 2 be accepted. The learned

advocate for respondents No. 1, 2, and 4 in support of his submissions placed reliance on *Hindurao Tukaram Shelke Vs. Prakash Kallappa Awade* (2006 (1) Mh.L.J.), *Kailash vs. Nanhku and others* (2005 (2) Mh.L.J.) and *Sandeep Thapar vs. SME Technologies Pvt. Ltd.* (2014 (3) Mh.L.J.).

4. Perusal of documents show that the matter pertains to immovable property and valuable rights of the society and its members including defendants No. 1 and 2 are involved in the same. The trial Court while allowing the application has held that the sale deed which was executed in the year 1982 is sought to be cancelled by plaintiff. If the defendants are not allowed to file written statement, there would be multiplicity of proceedings. Therefore, in order to decide real controversy between the parties, the trial Court allowed the said application by imposing cost of Rs. 700/- on the defendants.

5. Taking into consideration the reasons given by the trial Court and the legal position set out by the Hon'ble Apex Court in *Kailash* (supra), *Sandeep Thapar* (supra) that, provision of Order VIII Rule 1 of Code of Civil Procedure being part of procedural law, are

directory and extension of time can be allowed if it was needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of defendant and grave injustice would be occasioned if time was not extended. All these ruling are considered by the trial Court while passing the impugned order. Admittedly, the suit pertains to the immovable property and valuable rights of the society and its members including defendants No. 1 and 2 are involved in the matter, the trial Court was therefore, justified in allowing the application filed by the defendants No. 1 and 2.

6. There is nothing on record to indicate that the delay in filing written statement is deliberately caused by defendants No. 1 and 2. In that view of the matter, I do not find any merit in the challenge raised in the writ petition. The petition devoid of merits, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE