

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8891 OF 2017

DILIP GOPALRAO GAIKWAD AND ANOTHER
VERSUS
ISHWARIBAI SUGNOMAL CHHETIYA AND OTHERS

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Advocate for Petitioners : Mr. Y. G. Gujarathi
Advocate for Respondents No. 1 to 3: Mr. Chaitanya Deshpande

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd AUGUST, 2022

ORDER :

1. The challenge in this petition is to the order dated 06.10.2016 passed by 3rd Joint Civil Judge, Senior Division, Dhule, below Exhibit-58 in Special Civil Suit No. 34/2013.

2. Suit is filed by respondents/original plaintiffs seeking specific performance of contract in respect of the suit property. The petitioner being defendants in the said suit failed to file written statement within a stipulated time and therefore, no written statement order is passed against the petitioners on 20.08.2013. The petitioners thereafter filed application Exhibit-58 on 22.07.2016 and prayed for setting aside no written statement order. The petitioners also submitted written

statement along with the said application. This application is rejected. Hence, the present petition.

3. Having heard the learned advocate for the petitioners and learned advocate for the respondents and after going through the record, this Court is of the view that no written statement order passed against the petitioners is required to be set aside.

4. Since the suit is filed for specific performance of contract of immovable property, substantial rights of the parties are involved in the matter. If opportunity to file written statement is denied to the defendants, it will cause serious prejudice to their right to defend the case. *"Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them."* _ _ _ _ . *"The law of natural justice exists in the sense that a party must be heard in a Court of law, or at any rate be afforded an opportunity to appear and defend*

himself, unless there is express provision to the contrary, is, we think, beyond dispute." _ _ _ _ . *"Do forms or procedure should ever be permitted to exclude the presentation of a litigant's defence."* [Vide **Sangram Singh Vs. Election Tribunal, Kotah, Bhurey** (AIR 1995 SC 425)].

In the light of this ratio and in the interest of justice, reasonable and fair opportunity to contest the suit needs to be given to the petitioners.

5. At the same time it cannot be ignored that the petitioners belatedly filed application for setting aside no written statement order after a period of three years. In the facts of the present case, following order would meet the ends of justice.

ORDER

- I) Impugned order dated 06.10.2016 passed by 3rd Joint Civil Judge, Senior Division, Dhule, below Exhibit-58 in Special Civil Suit No. 34/2013 is hereby quashed and set aside.
- II) Application Exhibit-58 is allowed subject to the petitioners paying cost of Rs. 30,000/- to the respondents, in the Trial Court.
- III) Since the petitioners have already deposited cost of Rs. 10,000/- in the Trial Court,

petitioners shall deposit Rs. 20,000/- in the Trial Court.

- IV) The respondents are entitled to withdraw the cost of Rs. 30,000/-.
- V) Taking into consideration the fact that the suit is of year 2013, the hearing of the suit is expedited.

[NITIN B. SURYAWANSHI, J.]