

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6014 OF 2019

Shila Bhimashankar Madhekar and Anr.	..Petitioners
Versus	
Surekha Audumber Kale and Ors.	..Respondents

Mr. Samir Kumbhakoni, for the Petitioners.

CORAM : NITIN W. SAMBRE, J.

DATE : 17th FEBRUARY, 2022

PC.

1. Though served none appears for respondent No.1/ plaintiff.
2. Heard.
3. The order impugned is dated 9th March, 2017 passed by 2nd Joint Civil Judge Junior Division, Barshi whereby the prayer for extension of time to deposit the amount of cost came to be rejected.
4. The contentions of learned counsel for the petitioners are, the petitioners are defendant Nos.1 and 2 in the suit for partition being RCS No.353 of 2012. Even if there is delay in filing written statement, the same was not intentional. As such, the Trial Court ought to have shown indulgence while passing order of

deposit of cost. He would claim that the cost could not be deposited within time because of the communication gap between the parties and the lawyer. As such, he would urge that the time be extended to deposit cost and written statement be permitted to be placed on record.

5. It is not in dispute that present petitioners/defendant Nos.1 and 2 were served in July, 2012 and have failed to place written statement on record.

6. As a consequences of the same, petitioners taken out application Exh.22 for permission to place on record written statement which was allowed subject to payment of cost of Rs.800/- vide order dated 21st October, 2016. Since the cost was not deposited, the Court has recalled the order dated 21st October, 2016 on 9th March, 2017.

7. It appears that there are no convincing reasons for not filing written statement within time stipulated. Though the Trial Court has shown indulgence vide order below Exh.22, petitioners have failed to comply with the same. In the aforesaid background, by way of last indulgence, petitioners are permitted to place on record written statement subject to payment of cost of Rs.10,000/- each before the Trial Court. If the cost is so deposited with the written statement, the Trial Court shall be at liberty to accept the same and may pass further order of apportionment of the cost. If

the cost is not deposited within a period of two weeks from today, the Court shall proceed ahead with the suit without taking written statement of the petitioners/defendant Nos.1 and 2 on record.

8. The petition as such stands partly allowed with above extent.

[NITIN W. SAMBRE, J.]