

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

WRIT PETITION NO.289 OF 2013

Mahadeorao Hanumant Suryawanshi and Ors. ..Petitioners
Versus
Amit Mahadeorao Suryawanshi ..Respondent

Mr. Ashutosh M. Kulkarni i/by Akshay P. Shinde, for the Petitioners.
Mr. S. N. Chandrachood, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 16th MARCH, 2022

PC.

1. This petition is by the defendants to Special Civil Suit No.2220 of 2011 which is for partition and separate possession.
2. Petitioner No.1/defendant No.1 is father of the plaintiff.
3. After the suit summons was received by the petitioners, it is claimed that petitioners entered their appearance on 19th December, 2011 and the application for adjournment to place on record written statement being Exhs.15, 17 and 18 were allowed. Ultimately, on 17th March, 2012, "No W. S." order was passed. It is claimed that application Exh.22 came to be moved for setting aside "No W. S." order. The 90 days period claimed to have expired on 18th March, 2022 for filing written statement. Vide order impugned dated 26th April, 2012, said prayer is rejected by the Court below.

As such, this petition.

4. The submissions are, considering the status of the parties to the suit which is for partition, each of them have common interest in the suit property, the Court below ought to have permitted the petitioners to place on record their written statement which was delayed by ten days. As such, delay was unintentional and bonafide.

5. Mr. Ashutosh Kulkarni, learned counsel for the petitioners would urge that the petitioners can be put to certain reasonable conditions. Subject to compliance, “No W. S.” order passed on 17th March, 2022 needs to be set aside by permitting the petitioners to place on record written statement. According to him, if chance is given written statement which is ready can be tendered forthwith.

6. Mr. S. N. Chandrachud, learned counsel appearing for the respondent/plaintiff would oppose the aforesaid prayer. He would invite attention of this Court to Exh.22, wherein “No W. S.’ order sought to be set aside was moved at belated stage. According to him, since the said application sans any reasons, the order impugned came to be passed.

7. He would further urge that considering the provisions of Order VIII of the CPC, it is necessary to be appreciated that

mandatory period of filing of written statement cannot be extended merely for asking. Drawing support from the judgment of this Court in the matter of *Jenty Vs. Rajshree* reported in *2003(4) Mh.L.J. 1034*, he would urge that since no sufficient reasons are disclosed by the petitioners in support of prayer for setting aside of “No W. S.” order and failure of due diligence, the petition is liable to be dismissed.

8. Considered rival submissions.

9. The suit in question is for partition and separate possession which is stayed since for last almost nine years. In view of interim relief, the suit proceedings are delayed for considerable period.

10. As a consequence of above, trial in the suit is yet to commence. This Court is required to be sensitive to the fact that in a suit for partition, status of the parties is that of having interest in common. In the aforesaid background, though Mr. S. N. Chandrachud, learned counsel appearing for the respondent is justified in claiming that there was unexplained delay of almost ten days in preferring written statement after expiry of period of ninety days, in the interest of justice, this Court is of the opinion that in the interest of justice one more chance is required to be given to the petitioners/defendants to place on record their written statement.

11. In the aforesaid background, order impugned dated 26th April, 2012 is hereby quashed and set aside.

12. The order dated 17th March, 2012 whereby the “No W. S.” order was passed is also set aside.

13. The petitioners shall tender their written statement along with cost of Rs.25,000/- within a period of two weeks from today before the learned Trial Court. If the time period as mentioned herein-above is not adhered to for the deposit of cost with written statement, the Trial Court shall proceed with the suit on its own merits and without written statement of the petitioners.

14. Needless to clarify that respondent/plaintiff shall be entitled to withdraw the cost.

15. The petition as such stands disposed of in above terms.

[NITIN W. SAMBRE, J.]