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

WRIT PETITION NO. 1410 OF 2022

MANJULA RAO AND ANR. ..PETITIONERS
VS.
STATE OF MAHARASHTRA ..RESPONDENT

Mr. Vishwajeet Kapse a/w. Mr. Kunal Rane i/b. Mr. Shubham
Misar for petitioner.

Mr. S. H. Kankal and Smt. M. S. Bane, AGP for the State.

CORAM : M. S. KARNIK, J.
DATE : JULY 21, 2022.

P.C. :

1. This is a petition by the original plaintiffs under Article 227 of the Constitution of India challenging the order dated January 20, 2020 passed by the Civil Judge, Junior Division, Alibaug, allowing the application Exhibit 47 filed for setting aside "No WS Order" passed against the present respondent nos. 1 and 2. The petitioners – original plaintiffs filed a suit for declaration and injunction. The respondent nos. 1 and 2 had issued a notice under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (hereafter 'the said Act' for short). The petitioner – original plaintiffs filed a suit challenging the order dated February 16, 2016 passed by the Sub Divisional Officer, Alibag Sub Division, Alibaug, alleging the violation of Sections 52, 53, 54, 55, 56 and 57 of the said Act by the petitioners and for removal of the unauthorized construction on the subject land.

2. Since the respondent nos. 1 and 2 did not file a written statement within time granted by the Court, "No WS Order" came to be passed and the suit proceeded accordingly. At the stage, when the petitioner no.1 was in the witness box, an application Exhibit 47 was made by the respondent nos. 1 and 2 for setting aside "No WS Order". For the reasons mentioned in the order dated January 20, 2020, on the application Exhibit 47, "No WS Order" was set aside.

3. Learned counsel for the petitioners contended that hardly any reasons are assigned by the trial Court while setting aside "No WS Order". According to him, there has been an inordinate delay in filing the application and that too without any satisfactory reasons. In the alternative, it is submitted by him that since the suit is of the year 2016, if this Court is not inclined to interfere with the impugned order, then at least the suit which is pending from 2016 be expedited in the interest of justice.

4. Learned AGP argued in support of the impugned order.

5. No doubt, there has been a delay in filing the written statement. The reasons mentioned in the application are that due to the election duty which was assigned to the respondents in the interregnum, that there was delay in filing the application for setting aside "No WS Order".

6. I have gone through the impugned order. The trial Court has granted an opportunity to the respondent nos. 1

and 2 – original defendants to contest the suit on merits. In the facts of the present case, the petitioners deserved to be compensated with costs for the delay in filing the written statement, if at all the “No WS Order” is to be set aside. However, learned counsel for the petitioners, on instructions, fairly submitted that they are not interested in costs and that they would be satisfied if the hearing of the suit be expedited instead.

7. I am not inclined to interfere with the impugned order. However, considering the facts and circumstances of the present case, the trial Court is requested to expedite the suit which was filed in the year 2016. The trial Court is requested to dispose of the same as early as possible and in any case by March 31, 2023. Parties to co-operate.

8. Subject to what is observed above, the writ petition is disposed of.

(M.S.KARNIK, J.)