

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2117 OF 2023

Indirabai Chokoba Kamble And Another

Petitioners

Versus

Syed Moinuddin Syed Ismail Died
Through Lrs Sayed Meraj Syed Moinuddin
And Others

Respondents

Mr. U.B. Deshmukh, Advocate for the petitioners.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd AUGUST, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by learned Civil Judge, Junior Division, Degloor, below Exhibit-31 in Regular Civil Suit No. 147/2014, thereby rejecting the application filed by the defendant Nos. 1 to 6 and 8 to 15 for setting aside no written statement order.

2. Heard the learned advocate for the petitioners. Perused the memo of writ petition, its annexures and the impugned order. Though, contesting respondent Nos. 1 to 3 are served privately and service affidavit to that effect is filed on record, none appears for them.

3. Plaintiffs have filed suit for declaration, possession and permanent injunction against the defendants. Though, defendants appeared, they failed to file written statement within stipulated time. Therefore, order of no written statement is passed against the petitioners on 17.04.2015.

4. Thereafter, petitioners preferred application Exhibit-31 for setting aside no written statement order, contending that the defendants are poor and they used to go at different places for earning their livelihood. Since last three years there was drought situation and therefore they could not file written statement within stipulated time. Therefore, they prayed for setting aside no written statement order. Petitioners have also filed counter claim.

5. Trial Court has rejected the application on the ground that the application is belatedly filed after four years and from the submission of defendants it cannot be assumed that the defendants were performing labour works for four years. Grounds mentioned in the application are not digestible and hence, Trial Court rejected the application.

6. Valuable rights of the defendants in the immovable property are involved in the matter. Trial Court has adopted hypertechnical approach in rejecting the application. There was no occasion for the Trial Court to doubt the contention of the petitioners that they were doing labour work and due to drought situation they had gone outside to earn their livelihood. The impugned order since denies reasonable and fair opportunity to contest the suit on merits, cannot be sustained. Hence, the following order:

ORDER

- 1] Writ petition is allowed.
- 2] Impugned order dated 29.08.2022, passed by learned Civil Judge, Junior Division, Degloor, below Exhibit-31 in Regular Civil Suit No. 147/2014 is hereby quashed and set aside on the condition that petitioners shall pay cost of Rs. 15,000/- to the plaintiffs in the Trial Court, within a period of four weeks from the date of receipt of writ of this order.
- 3] Application Exhibit-31 is allowed.

[NITIN B. SURYAWANSHI, J.]