

Since, petitioners failed to file say, no say order was passed against the petitioners by the Trial Court on 10.08.2021. By application Exhibit-22, petitioners prayed for setting aside the order of no say passed against the petitioners and to allow them to file say. This application is rejected. Hence, the present petition.

3. Heard the learned advocate for the petitioners and learned advocate for the respondents. Perused the grounds in the writ petition, annexures thereto and the impugned order.

4. The approach of the Trial Court in rejecting application Exhibit-22 is hyper-technical. This is not a suit but civil miscellaneous application filed under Order 39 Rule 2A of CPC. Though, it is a fact that the petitioners have failed to submit say within time, but in keeping with the principles of natural justice and with a view to give petitioners a reasonable and fair opportunity to contest the matter on merits, the Trial Court ought to have allowed the application, may be by imposing costs. Since, the impugned order deprive the petitioners opportunity to contest the matter on merits and put up their defence, the impugned order cannot be sustained.

5. Learned advocate for the respondents strenuously opposed the petition contending that the petitioners were prosecuting the other proceeding during this period and they have belatedly approached the Trial Court by filing said application.

6. Since, this Court has come to a conclusion that the impugned order cannot be sustained, for lack of due diligence the respondent No. 1 can be adequately compensated.

7. For the aforesaid reasons, writ petition is allowed.

8. The impugned order dated 24.01.2022, passed below Exhibit-22 in Civil Miscellaneous Application No. 248/2020 and no say order dated 10.08.2021 is hereby quashed and set aside.

9. Application Exhibit-22 is allowed, subject to petitioners paying costs of Rs. 5,000/- to the respondent No. 1 in the Trial Court within four weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]