

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14189 OF 2019

Mukta Rajendra Shinde

.... Petitioner

Versus

Ganga @ Gangadhar Krushna @
Krushnaji Raskar and others

.... Respondents

.....

Mr. V.V. Tarde, Advocate for Petitioners

Mr. K.N. Shermale, Advocate for Respondent No.5

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th September , 2023

ORDER :

1. Order passed by learned Civil Judge, Senior Division, Shrirampur, below Exhibit-27 in Special Civil Suit No.32 of 2016 is impugned in the present petition.

2. Suit is filed by petitioner/plaintiff for partition, separate possession and permanent injunction against six defendants. According to petitioner/plaintiff, defendant Nos.5 and 6 are purchaser of the suit property. In the suit, summons was sent on the address of defendant No.5, however, the same returned unserved on 28/02/2017, along with report Exhibit-11. Since petitioner/plaintiff failed to take necessary and effective steps to serve defendant No.5, by order dated

10/07/2017, the suit was dismissed as against defendant No.5 for want of prosecution. Petitioner/plaintiff, thereafter, filed application Exhibit-27 for setting aside dismissal order against defendant No.5. Trial Court has rejected the said application. Hence, the present petition.

3. Heard learned advocate for petitioner and learned advocate for respondent No.5. Perused the writ petition memo, annexures thereto, and impugned order.

4. Learned advocate for respondent No.5/defendant No.5 vehemently opposed the prayer of petitioner/plaintiff stating that without filing any delay condonation application, present application is filed belatedly, and therefore, Trial Court is justified in rejecting the said application. He further submits that, no sufficient ground is mentioned in the application seeking setting aside of dismissal order for want of prosecution. He submits that because of negligence on the part of plaintiff, dismissal order is passed against defendant No.5. Therefore, Trial Court is right in rejecting the application.

5. It is the case of petitioner/plaintiff that defendant No.5 is the purchaser of ancestral property, and since in the suit, partition is sought by petitioner/plaintiff in the said

property, he is necessary party. It is required to be noted here that in the present writ petition also, defendant No.5 is served on the same address, on which suit summons was issued to respondent No.5/defendant No.5, in the suit. Since he is the necessary party, Trial Court has erred in rejecting application Exhibit-27 filed by petitioner/plaintiff. Though the application is filed with some delay, the same can be condoned by imposing suitable costs.

6. In the result, the writ petition is allowed.

7. Impugned order dated 23/01/2019 passed by learned Joint Civil Judge, Senior Division, Shrirampur, below Exhibit-27 in Special Civil Suit No.32 of 2016, is hereby quashed and set aside.

8. Application Exhibit-27 is allowed.

9. Petitioner/plaintiff shall pay costs of Rs.10,000/- to Respondent NO.5/defendant No.5 in the trial Court.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane