

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6665 OF 2022

RATAN VISHWANATHRAO KOYLE AND OTHERS
VERSUS
RASIKABAI DIGAMBAR SAGAVE AND OTHERS

Mr. Santosh S. Jadhavar, Advocate for the Petitioners.

Mr. A.M. Reddy, h/f. Mr. Vikarant S. Valse, Advocate for the
Respondent No.1.

Mr. Tukaram M. Venjane, Advocate for Respondent Nos.2 and 3.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 12, 2023.

PER COURT :

1. By this petition, the Petitioners who were the original defendants in a partition suit bearing RCS No.360 of 2012, have objected to the order dated 10.12.2021 passed by the Trial Court in an application below Exh. 202, whereby after a period of nine years, the order of “No Written Statement” (“No W.S.”) was set aside by the Trial Court and the written statement of the Respondent nos.2 and 3 were directed to be taken on record.

2. Learned counsel for the Petitioner submits that the order of “No W.S.” was passed in the year 2012 and the present application for setting aside the order of “No W.S.” was filed by the respondent Nos. 2 and 3 in the year 2021. He would further urge that the reasons which have been set out in the application for

setting aside “No W.S.” order are not cogent and the trial court has accepted the said explanation and directed the written statement is to be taken on record. He would further urge that the evidence of Respondent no.1 i.e. plaintiff and the evidence of the Petitioner is also over and thereafter the application was filed.

3. *Per contra*, the learned counsel for the Respondent nos.2 and 3 submits that sufficient explanation given in the application for setting aside the ‘No WS’ order, inasmuch as the matter was being settled between the parties and there was talk of settlement between the parties and it is only when the talks failed, the said application was made. He would further urge that the Respondent No.1 who is the plaintiff is not aggrieved by taking the “No W.S.” order on record and the present Petitioner has no right to challenge the order.

4. I have considered the rival submissions of the parties.

5. It is not disputed that an order of “No W.S.” came to be passed in the year 2013. Thereafter, after a gap of almost nine years and after the trial has commenced, the application for setting aside the “No W.S.” order is filed. The provision of Order VIII Rule 1 of the Code of Civil Procedure, 1908, provides for the written statement to be filed within a period of 30 days, which can be extended for a further period of 90 days.

6. It is settled that the said provision is directory and written statement can be taken on record even after expiring of the

period mandated under Order VIII Rule 1 of the Code of Civil Procedure, 1908, however, the same has to be within a reasonable period. In the present case, after lapse of nine years, and without any prayer seeking condonation of delay or offering any sufficient explanation, the written statement has been taken on record. Perusal of the impugned order of the trial Court shows that the trial court has not applied its mind to the sufficiency of the explanation and without any reasoning has accepted the explanation tendered, without going into the aspect of the lapse of nine years. As such, this Court was inclined to set aside the impugned order. Learned counsel for the Respondents suggested payment of cost of Rs.1,00,000/-, inasmuch as the written statement has already been taken on record and the Respondent Nos.2 and 3 were under cross-examination, which suggestion was accepted by the learned counsel for the Petitioner.

7. Considering the above, and the willingness of the respondents to pay cost to the Petitioner and considering the fact that the evidence of the Respondent Nos.2 and 3 is already commenced, in the interest of justice instead of setting aside the impugned order, upon payment of cost of Rs.1,00,000/- by the Respondent Nos.2 and 3 to the Petitioner the writ petition can be disposed of.

8. The Respondent Nos.2 and 3 to pay cost of Rs.1,00,000/- to the Petitioner within a period of four weeks from today.

9. The payment of costs of Rs.1,00,000/- within a period of four weeks by the learned counsel for the Petitioner, on instructions is accepted as an undertaking to this Court.
10. Writ Petition is disposed of in the above terms.

(SHARMILA U. DESHMUKH, J.)