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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9914 OF 2023

Kailash Pandurang Patil and Others

PETITIONERS

VERSUS

Ratnabai Digambarrao Upase Khatgaonkar & Ors RESPONDENTS

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Mr. Devanand Y. Nandedkar, Advocate for the petitioners

Mr. Satyajit S. Bora, Advocate for respondent No.1

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[CORAM : SHAILESH P. BRAHME, J.]

DATE : 2nd NOVEMBER, 2023

ORDER :

1. Though the matter is appearing in due orders category today, learned advocates present today have made a joint request to decide the present petition finally. Unserved respondents and others are formal parties. As the contesting parties are before the Court, the matter is taken up for adjudication.

2. The petitioners are original defendants No.1, 2 and 5, whose application Exhibit-56 seeking quashment of "*No Written Statement*" order is rejected by the order dated 18th July, 2023 passed in Regular Civil Suit No. 828 of 2017.

3. Learned advocate for the petitioners submits that the impugned order is against the principles of natural justice. Substantive rights and liabilities of the parties are involved in the suit. A written statement has already been filed along with the application Exhibit-56. Learned advocate for the petitioners undertakes to co-operate the Trial Court in deciding the civil suit promptly.

4. Mr. Satyajit Bora, learned advocate supports the impugned order. It is vehemently pointed out that there is inordinate delay in presenting the written statement along with application Exhibit-56. His client is aspiring for partition and separate possession. The trial of the suit has been protracted. He would urge that this is not a fit case to show any leniency to the petitioners.

5. There is considerable delay in presenting application Exhibit-56. The stakes of the litigating sides are involved in the suit. Ends of justice would be met if the suit is tried on merits. The petitioners deserve opportunity to contest the suit, of course on certain conditions.

6. The suit is of the year 2017. There is already delay in filing written statement which is filed with application Exhibit-56.

The petitioners are liable to pay costs to respondent No.1. I, therefore, propose to pass following order:

ORDER

- I. Writ petition is allowed.
- II. Order dated 18th July, 2023 passed below Exhibit-56 in Regular Civil Suit No. 828 of 2017 by learned Civil Judge, Senior Division, Osmanabad is quashed and set aside.
- III. The application Exhibit-56 tendered by the petitioners stands allowed, subject to payment of costs of Rs.30,000/- (Rupees thirty thousand only) to respondent No.1 within four weeks from today. Cost is to be deposited in the Trial Court.
- IV. Payment of costs shall be condition precedent.
- V. Petitioners shall co-operate the Trial Court for expeditious disposal of suit.

[SHAILESH P. BRAHME]
JUDGE