

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 236 OF 2015

1. Gram Panchayat Takarkheda,
Tq. Amalner, Dist. Jalgaon.
Through its Sarpanch.

2. Gram Panchayat Takarkheda,
Tq. Amalner, Dist. Jalgaon.

... Petitioners

VERSUS

Yuvraj Bhivsan Koli

Age : 50 years, Occ.: Labourer,

R/o : Takarkheda, Tq. Amalner, Dist. Jalgaon.

...Respondent

...

Advocate for Petitioners : Mr. Patil Vinod Prakash

Advocate for Respondent : Mr. M.G. Kochar h/f Mr. Waramaa B.R.

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 25 OCTOBER 2023

PER COURT :

Heard both the sides finally.

1. The petitioners are challenging an order dated 18.10.2014, rejecting their application to set aside no written statement order. The petitioners are the defendants. The respondent is the plaintiff who has filed suit for injunction.

2. By way of interim order passed on 20.01.2015, the further

proceeding of RCS No.7/2012 has been stayed. The suit has not been proceeded so far.

3. The respondent has filed suit for injunction. The summons were served upon the petitioner on 21.01.2012. They failed to file written statement within thirty days i.e. on 19.02.2012. Thereafter also no written statement was filed. Hence on 13.06.2012, 'No written statement order' was passed. The said order is sought to be quashed by filing application at Exhibit-28.

4. The petitioners filed application (Exhibit-28) on 03.10.2013 which is after sixteen months from the date of passing of no written statement order. The respondent has contested application (Exhibit-28). The said application is rejected by order dated 18.10.2014 by disbelieving the reasons assigned by the petitioners. It is held that the petitioners are casual in prosecuting the matter. It is further recorded that they are expected to be more vigilant, when they are officers of the Village Panchayat. It is held that no exceptional case is made out by the petitioners for causing any indulgence.

5. The learned Advocate for the petitioners submits that a copy of written statement is presented alongwith application (Exhibit-28). In paragraph no.1 of the application (Exhibit-28), the reasons are assigned for not taking steps and time. He would pray that the in the interest of the justice, the application should have been allowed. The approach of

the learned trial Judge is against the principles of natural justice. It is further submitted that the petitioner no.1 is a local body and there is nothing personal against the respondent.

6. The learned Counsel for the respondent supports impugned order. According to him, the learned trial Judge is justified in rejecting the application. The approach of the petitioners is very casual. To harass the respondent strategically, application (Exhibit-28) was filed belatedly. He would submit that the respondent is facing hardship and prays to dismiss the petition.

7. I have considered the rival submissions of the parties. The application (Exhibit-28) in its paragraph no.1 shows the reasons for not filing written statement in time. It is a matter of record that the application (Exhibit-28) is filed after sixteen months from the order of no written statement i.e. 13.06.2012.

8. The learned trial Judge has referred to the judgments of the Higher Court cited while considering application (Exhibit-28). The proposition laid down in those judgments cannot be disputed. However in the present matter the proceeding of RCS No.7/2012 has already been stayed. The petitioners have already filed written statement on record. No severe prejudice can be said to be caused to the respondent if the order of no written statement is quashed.

9. The ends of the justice would be met if the impugned order is quashed and written statement filed on record, is considered. There is nothing on record placed by the respondent to doubt the reasons assigned by the petitioners in application (Exhibit-28). I am of the considered view that the matter needs to be decided on merits. At the same time, the delay of sixteen months caused for filing application (Exhibit-28) also cannot be ignored. By interim order, the petitioners have already been directed to deposit Rs.10,000/- in the trial Court. It is informed that the compliance has been made.

10. For the reasons stated above, I allow this petition by quashing and setting aside the order dated 18.10.2014 passed below Exhibit-28 in RCS No.7/2012. The amount already deposited by the petitioners in the trial Court shall be permitted to be withdrawn by the respondent/plaintiff.

11. The writ petition is disposed of in the above terms.

[SHAILESH P BRAHME, J.]

Najeeb.