

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2805 OF 2022

Madhukar Jarichand Daultode and Others

...Petitioners

Versus

Navnath Ganpat Wagaj and Others

..Respondents

Mr. Ashok B. Tajane for the petitioners.

Coram : Sharmila U. Deshmukh, J.

Date : 10th July , 2023.

P. C. :

1. Heard.

2. The Petition questions the order dated 30th November, 2021 passed in Special Civil Suit No.97 of 2007 rejecting the Petitioners application for setting aside no written statement order and for taking the written statement on record.

3. Learned counsel appearing for the Petitioners submits that the Petitioners are the original Defendant Nos.4 to 7. The suit filed by the Respondents-Plaintiffs for declaration and for direction to execute the sale deed. He would further submit that till the year 2021 the suit was at the stage of bringing the legal heirs of the deceased Defendant No.1 on record and subsequently the issues have been framed. He would further submit that the application to set aside no

written statement order has been filed on 22nd October, 2021 before the evidence has been filed by the Plaintiffs and as such would urge that an opportunity be given to the Petitioners to contest the suit on merits. He would further point out that in the said application sufficient explanation has been tendered that the Petitioners were in the process of collecting the relevant documents related to the proceedings. He would further point out that subsequently documents were filed in support of the application for setting aside the “no written statement” order which included the medical certificate of the Defendant Nos.4 and 5. He would further submit that these medical documents were not considered by the trial Court while deciding the application.

4. Considered the submissions of the learned counsel for the Petitioners. The fact is not in dispute that the order of “no written statement” came to be filed against the Petitioners on 16th June, 2008 and application for setting aside the no written statement order has been filed in the year 2021. In the application for setting aside “no written statement” order explanation which is sought to be put forward by the Petitioners is that they were in the process of collecting the documents and also due to Covid-19 Pandemic, the Courts were not functioning for a period of two years. The application filed after a period of almost 13 years. If we consider the application

bare statements are made therein that the Petitioners were in the process of collecting the necessary documents. It is neither pin pointed as to which document was sought to be collected which could have material bearing on the defence or the reason why these documents was not available and the departments from which these documents was sought as well as the details of when the applications for seeking these documents were filed. The averments made in the application for setting aside no written statement order is bereft of any detail. It appears from the contents of the application that the same is made in casual manner irrespective of fact that for a period of 13 years no steps were taken by the Petitioners for setting aside the “no written statement” order passed in the year 2008. The affidavit of evidence has been filed. However, it needs to be noted that due to gap of 13 years of non filing of the written statement a valuable right is accrued to the Plaintiffs. The application does not state as to whether the advocate had been appointed by the Petitioners and the reason why instructions could not be given to the advocate if so appointed. The contents of the application are completely silent on these aspects. Reliance is placed on the subsequent document which came to be filed on 26th November, 2022¹ purporting to be the medical certificates of the Petitioners, which are annexed at Page Nos.69 to 79. A perusal of the medical certificates indicate that the

Defendant No.5 was taking homeopathic treatment and in addition was suffering from backache and other ailments. To this effect is the medical certificate of the Defendant No.4 stating that the Defendant No.4 was taking homeopathic treatment and suffering from recurring renal stone. The certificates have been issued by the same Doctor of Fatema Homeopathic Consulting. In my opinion, the medical certificate does not assist the Petitioners for the simple reason that the same does not disclose the ailment of such nature which would prevent the Petitioners from giving necessary instructions to the advocates for filing of the written statement. The ailments which are mentioned in the certificates are recurrent renal stone and chronic backache which cannot be said to be ailment of such a nature which would prevent the Petitioners from going on with their day to day affairs. The trial Court while considering the application has not taken into consideration the medical certificate produced however in my opinion, it does not take the case of the Petitioners any forward for the reason that the medical certificate could not deserve any attention in support of the Petitioners case. Even if the trial Court would have considered the said material the same would not have taken the case of the Petitioners any further.

5. Considering that the Petitioners have not been diligent in protecting their rights in the suit of the year 2007, and no sufficient

explanation has been tendered this Court is not inclined to set aside the order of “no written statement” and permit the written statement to be taken on record.

6. Writ Petition stands dismissed.

[Sharmila U. Deshmukh, J.]