

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7421 OF 2022

M/s. Siddhi Gaurav Enterprises,

...Petitioner

Versus

Dattaram Eknath Patil & Ors.

...Respondents

Mr. S. M. Oak, Mr. Tushar Sonawane, Ms. Pooja Satpute for the petitioner.

Mr. P. G. Sawant, AGP, for respondent No.2.

Coram : Sharmila U. Deshmukh, J.

Date : June 27, 2023.

P. C. :

1. Heard Mr. Oak, learned counsel appearing for the petitioner and Mr. Sawant, learned counsel appearing for respondent No. 2.

2. The challenge in the petition is to the order dated 28th February, 2020 passed below Application Exhibit-111/D in Special Civil Suit No. 257 of 2017. By the application below Exhibit-111/D, the petitioner sought permission to file their say to the application filed by the defendant Nos. 1 to 9 for setting aside the order of "No WS" passed against defendant Nos. 1 to 9.

3. Learned counsel appearing for the petitioner submits that defendant Nos. 1 to 9, who are the vendors of defendant No. 10, now intend to support the case of the plaintiff. He would further submit that as such he has a right to oppose the application for seeking to set aside the order of “No WS”.

4. Considered the submissions of the parties. The order of “No WS” accrued to the benefit of the plaintiff, who has now acquired a right to seek ex-parte decree against the undefended defendants. The application seeking to set aside the “No WS” order will affect the right of the plaintiff, inasmuch as if the order is set aside, and, Defendant No. 1 to 9 will be permitted to file their written statement and the valuable right which has accrued to the plaintiff will get affected.

5. Learned counsel appearing for the petitioner is unable to demonstrate any provision which permits a co-defendant to object the other co-defendant’s application for setting aside the “No WS” order. It is only in event the right of any party being affected by the application, that the party acquires a right to contest the application. In the present case, the apprehension is

that defendant Nos. 1 to 9 may file a Written Statement which would support the case of the plaintiff. It will be a matter of evidence and for defendant No. 10 to establish his case by cross examination of defendant Nos. 1 to 9. For that purpose, it cannot be said that setting aside of the “No WS” order affects any right of the defendant.

6. In view of the above, there is no infirmity in the impugned order dated 28th February, 2020. The Writ Petition is devoid of merits and stands dismissed.

[Sharmila U. Deshmukh, J.]