

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 13092 OF 2022

Suresh Bhagwan Buva & Anr.

..Petitioners

Versus

Guruprasad Sadanand Pawaskar & Ors.

..Respondents

Mr. Paras Yadav for Petitioners.

Mr. Rahul S. Kadam for Respondent No.1.

CORAM : SARANG V. KOTWAL, J.

DATE : 24 APRIL 2023

PC :

1. This petition is filed by the original Defendant Nos.1 and 2 challenging the order dated 12/07/2022 passed by 3rd Jt. Civil Judge, S.D., Kolhapur in Special Civil Suit No.371 of 2018 below Exhibit-75. By the impugned order, learned Trial Judge rejected the application filed by the Petitioners for setting aside 'No W.S.' order.

2. Heard Shri. Paras Yadav, learned counsel for the Petitioners and Shri. Rahul Kadam, learned counsel for the Respondent No.1.

3. Vide order dated 21/03/2023, this Court had directed the Petitioners to file an affidavit in respect of the alleged violation of the order dated 25/02/2019 restraining the original Defendant No.3 from disbursing the fixed deposit amount of Rs.15,50,000/- lying in the name of the petitioners.

4. Learned counsel for the Petitioners invited my attention to the affidavit filed by the Petitioner No.1 mentioning that no amount was withdrawn after passing of that order.

5. I have also heard the parties for the main challenge made by the Petitioners. The Respondent No.1 who was the original Plaintiff. This plaint was filed on 05/10/2018. Learned counsel for the Respondent No.1-Plaintiff states that the suit has progressed substantially and as of today four witnesses of the Plaintiff are already examined. He, therefore, submitted that, at this stage, permission cannot be granted to the Petitioners-Defendant Nos.1 and 2 to file their written statement.

6. Learned counsel for the Petitioners submitted that they were prevented from acting diligently because there was flood in

between and there was also spread of Covid-19 pandemic. He submitted that, by imposing some reasonable cost, the Petitioners be permitted to file their written statement.

7. I have considered these submissions and I have perused the impugned order. The impugned order records the history of utter negligence and deliberate inaction on the part of the Petitioners. It also shows total disregard that the Petitioners have shown towards the court proceedings. It is recorded that the suit summons was issued at the address of the Petitioners. The bailiff report dated 25/10/2018 shows that the flat was locked and the summons was not served. Thereafter the summons was reissued to the Petitioners. The Bailiff report dated 28/11/2018 shows that the Petitioners were available at home but they refused to accept the summons, therefore, it was affixed on the door of their house.

8. After that the Petitioners engaged an advocate and appeared before the Court on 04/12/2018. Even then they did not file their Written statement. The original Plaintiff's (Respondent No.1 herein) application vide Exhibit-5 was allowed. Thereafter

issues were framed on 25/02/2019. After that the Plaintiff examined four witnesses. The order records that the Petitioners were avoiding to appear before the Court and they appeared only after the proclamation was published against them. This all shows total negligent conduct and deliberate inaction on the part of the Petitioners. The excuses given about flood and spread of pandemic were in fact related to the year 2020. The inaction on their behalf is shown much prior to that. The suit has progressed further substantially. Four witnesses are already examined on behalf of the Plaintiff. Therefore, at this stage, permission cannot be granted to the Petitioners to file their written statement.

9. The petition is accordingly dismissed.

(SARANG V. KOTWAL, J.)