

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10570 OF 2019

Shri Dnyaneshwar @ Dnyndeo Sahadu Repale
and Anr.

... Petitioners

Versus

Shri Janardan Sahadu Repale
(Deceased through) LRs and and Ors.

... Respondents

— —
Mr. Uday B. Nighot for the Petitioners.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : August 1, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 8th August, 2019 rejecting the Petitioners' application for setting aside the "No WS" order passed on 17th November, 2014.

3. Learned counsel appearing for the Petitioners submits that the Respondents have been duly served. None appears for the respondents. In view of the limited controversy involved in the present petition, the same is taken up for hearing.

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4. The suit in question i.e. RCS No. 21 of 2011 has been instituted by the respondent-plaintiff seeking partition and separate possession of certain properties, which are mentioned in paragraph 3 of the plaint. The defendant nos.1 and 2 failed to file their written statement after they were served with the copies of the summons on 29th April, 2014 and, as such, the order of “No WS” was passed on 17th November, 2014.

5. On 10th January, 2019, an application came to be filed for setting aside the “No WS” order, which came to be rejected by the impugned order, giving rise to the present petition.

6. Mr. Nighot, learned counsel appearing for the Petitioners submits that the suit for partition included four properties of village Kandali claiming that the properties being ancestral properties. He would further submit that the dispute is only in respect of one property which is situated at Vaishakh-khede, which according to the Petitioners, was purchased by the Petitioner no.2 from the mother of the Petitioner no.1. He would contend that the written statement was not filed as there were talks of settlement was going on between the parties and also that the sale deed by which the mother of the

Petitioner no.1 had purchased the property was of the year 1973 and as such, the necessary documents in that regard were not procured. He would further contend that the Petitioners were suffering from certain ailments and as such, no instructions were given for filing of written statement. He would further point out that the written statement has been duly affirmed and the same is at page 22 of the petition.

6. Considered the submissions.

7. There is no doubt as regards the position that the Petitioners were served with the copy of the summons in the month of April, 2014. The contention of the Petitioners is that there were talks of settlement which was going on between the parties. It appears from a perusal of the impugned order that in the year 2017, the Petitioners have filed an application to keep the matter in Lokadalat. As such, the fact that there were talks of settlement was going on between the parties cannot be doubted. Considering that the settlement talks were going on it is not expected that the written statement be filed as the same would jeopardize the settlement talks. It appears that the settlement talks failed and as such, the Petitioners

were required to file their written statement. There are no details as to when the the matter was transferred from the Lokadalat to the Regular Court, however, considering that the petitioners have given sufficient explanation as to the position in the year 2017 it cannot be said that the Petitioners were not diligent. The order of the trial Court records that the plaintiffs have filed their affidavit in lieu of examination-in-chief in December, 2016 and subsequently, an application for amendment of the pleadings came to be filed alongwith application for condonation of delay. From the impugned order, it appears that since the year 2016, the matter is at a stage of cross-examination of the plaintiffs and the same has not been completed.

8. Considering that by depriving the Petitioners of the right to file written statement and contest the proceedings on merit would result in great prejudice to the Petitioners, I am inclined to set aside the impugned order dated 8th August, 2019 rejecting the application, subject to the payment of costs of Rs.5,000/- (Five Thousand) to be paid by the Petitioners to the plaintiffs-respondent Nos.1 to 3 within a period of four weeks from today. As the impugned order is quashed and set aside, the application dated 10th January, 2019 is allowed and

the written statement is permitted to be placed on record.

9. Writ Petition stands allowed in the above terms.

(Sharmila U. Deshmukh, J.)