

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2330 OF 2022

Pramod Ramdas Padghan and others .Vs. Kishorkumar Ramesh Padghan

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.G. Kavimandan, Advocate for the petitioners.

Shri N.B. Kalwaghe, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 19/07/2023

1. Heard.

2. A suit filed by the respondent for permanent injunction restraining the defendants/petitioners from disturbing the possession of the respondent came to be decreed ex-parte and in an appeal namely Regular Civil Appeal No.60 of 2015 the ex-parte judgment and decree was set aside vide judgment dated 11.08.2015 and the suit was restored back to the file of Civil Judge Jr. Dn., Chikhli, is the subject matter of the present petition.

3. In the said suit, despite numerous chances granted to the defendants/petitioners, no written statement was filed.

4. However, after examination of four witnesses on four different dates orders of no cross were passed.

5. Thereafter, on 10.02.2020, the application was filed for setting aside, no written statement, no cross and no evidence order and also for permission to file written statement, to conduct cross as well as to lead evidence.

6. The said application came to be rejected on the ground of negligence vide impugned order dated 28.02.2022, which is the subject matter of the present writ petition.

7. The learned counsel for the petitioners submits that if the application Exh.75 is not allowed, the defendant Nos.2 to 4 would be non-suited and thus, for the end of justice, the application may be allowed subject to cost.

8. The learned counsel for the petitioners further submits that on 16.06.2016 the matter was settled and therefore, the defendants were under the bonafide impression that there is no need to file the written statement.

9. However, it is evident from record that, the suit was restored in the month of August, 2015 and no explanation has been provided why no written statement was filed for about ten months after restoration of the suit. Furthermore, admittedly the no written statement order was passed on 11.03.2016 i.e. much before the settlement.

10. Shri Kalwaghe, learned counsel for the respondent/plaintiff strongly opposed the present petition on the ground that, it is a clear case of negligence and as the rights of the parties have already been crystallized, this Court may not allow the petition.

11. On perusal of record, I am fully agreeable with a view expressed by the learned trial Court that the petitioners are negligent in pursuing their rights for the reason that, initially the suit was decreed ex-parte and at the instance of the petitioners, it was set aside by the appellate Court and remanded the matter back to the trial Court. Despite the said fact, knowing well that earlier the suit was decreed ex-parte, the petitioners were not diligent.

12. After the suit was restored in the year 2015 numerous chances were given to the petitioners to file written statement which the petitioners have not availed and therefore, the Court proceeded without written statement. Thereafter, the evidence of the witnesses of the plaintiff were recorded. The defendant Nos.2 to 4 failed to cross-examine and therefore, no cross orders were passed and after closure of the evidence of the plaintiff since no evidence was lead by the defendant Nos.2 to 4, order of no evidence was passed against defendant Nos.2 to 4.

13. In the peculiar facts and circumstances of the case and in absence of any justifiable and probable explanation offered by the petitioners, I am not inclined to interfere with the impugned order.

14. The reliance placed by the learned counsel for the petitioners on a judgment of the Hon'ble Supreme Court of India in the case of *Desh Raj v. Balkishan (D) Through Proposed LR Ms. Rohini*¹, and the judgment of Co-ordinate Bench of this Court in the case of *Gopaldas and Co., Mazgaon, Mumbai and Ors. v. Gopaldas Corporation, Mumbai and Ors*², are of no help to the petitioners as the facts of the present case and the facts of the above referred judgments are distinguishable.

Accordingly, the writ petition is **dismissed**.

JUDGE