



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3308 OF 2013

ANURATH TULSHIRAM LANDE
VERSUS
RAMBHAU TULSIRAM LANDE AND OTHERS

Mr. V. M. Humbe, Advocate for the petitioner
Mr. S. B. Pulkundwar, AGP for the respondent/State
Mr. N. B. Tambade h/f Mr. S. S. Thombre, Advocate for respondent Nos.1 to 4.

CORAM : R. M. JOSHI, J.
DATE : 27th JUNE, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. Petitioner is original defendant No.1 in R.C.S. No. 8/2006 and being aggrieved by order dated 23/01/2013 whereby application for filing written statement belatedly came to be rejected by the learned Trial Court.
3. The facts as they appear for from the record indicates that petitioner i.e. original defendant No.1 is husband of plaintiff No.1 and father of other plaintiffs. Plaintiffs filed suit against defendants for

partition and separate possession. It is undisputed fact that defendant No.5 appeared pursuant to the service of summons on him on 13/03/2006. He, however, did not file written statement and hence by order dated 22/03/2006 suit was proceeded without written statement of this defendant. Other defendants filed their written statement on record. Trial Court framed issues. Thereafter evidence of the parties began. Plaintiff close his evidence so also evidence of defendant No.2 is over. It is at this stage i.e. 11/10/2012 an application is moved by defendant No.1 to file written statement seeking setting aside of order dated 02/03/2006 proceeding without written statement against him. Application (Exhibit 100) filed by the petitioner states that he old and he ill and therefore was unable to file written statement in the Court. Undisputedly, there is no supporting documentary evidence to indicate that the petitioner was ill and on that account he did not file written statement in time.

4. Learned counsel for the petitioner submits that the provisions of Order 8 Rule 1 directory and not mandatory in nature. It is his submission that merely because defendant No.5 has not filed written statement in time, the Court was not justified in setting aside the order of no W.S. It is submitted that the defendant No.1 whose as to file written statement admitting the claim of the plaintiffs. In order to

support his submission he placed reliance on the judgment of Hon'ble Supreme Court in case of ***Raj Process Equipments and Systems Pvt. Ltd. And Ors. Vs. Honest Derivatives Pvt. Ltd.*** in ***Civil Appeal No. 8089/2022.*** Learned counsel for the respondents supported the impugned order.

5. There cannot be any dispute made with regard to the law laid down by the Hon'ble Supreme Court of India to hold that the proviso to Order 8 Rule 1 of CPC is not mandatory but directory in nature. However, before permitting the party to file written statement at belated stage the Court must take into consideration the time lapsed in between and the justification given by the party for non filing of the written statement. Moreover, it is to be seen whether any prejudice would cause to defendant by not permitting him to file written statement.

6. Facts as narrated herein above disclose that suit is filed in the year 2006. Summons was served on defendant No.1 on 13/03/2006 though he appeared in the proceeding through an Advocate, no written statement is filed and hence the matter proceeded without his written statement on 22/03/2006. After lapse of more than 6 years the defendant No.1 moved application Exhibit 100 for setting aside order of no written statement. It is pertinent to note that though the averments are made in the application that on account of his illness written

statement was not filed, there is absolutely no material on record to substantiate the said contention. Thus, no material was there before the Trial Court to show any reason or sufficient cause made out this defendant for not filing written statement in time.

7. In the instant case defendant No.1 is the husband of plaintiff No.1 and father of other plaintiffs but he keeps himself away for the period of six years after filing of the suit. He makes a vague statement about his illness and does not support the same with any cogent material before the Trial Court. The stage of the proceeding is that the plaintiffs evidence is over so also the evidence of defendant No.2 is completed. Moreover, from the contentions made across the bar it is clear that defendant No.1 is not opposing the suit filed by the plaintiff but he is filing written statement admitting claim of the plaintiffs. In such circumstances, rejection of the application (Exhibit 100) for setting aside no written statement order has not caused any prejudice to the defendant No.1.

8. By order of this Court, R.C.S. No. 8/2006 is stayed since year 2013, hence Trial Court to decide the suit expeditiously. In such circumstances, since the petitioner has failed to prove any sufficient and reasonable cause for not filing the written statement in time and as no

prejudice will cause to him by non filing of written statement, the learned Trial Court cannot be said to have committed any error in dismissing the application. As a result of this, there is no merit in the petition, petition stands dismissed. Trial Court to proceed with the suit expeditiously.

(R. M. JOSHI, J.)

ssp