



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5788 OF 2023

SHESHERAO BABANNA WADAR AND OTHERS
VERSUS
JANARDHAN HAWGIRAO FULARI

Mr. Ajinkya Reddy, Advocate for the petitioners
Mr. N. R. Thorat, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 14th JUNE, 2024

PER COURT :-

1. Heard. By consent of both sides, heard finally at the stage of admission.
2. This petition takes exception to the order below Exhibit 193 dated 2nd February, 2023 in RCS No. 295/2010 whereby the application filed by these petitioners/original defendants for setting aside no Written Statement order is rejected.
3. Learned counsel for the petitioners submits that though the suit has been filed in the year 2010, present petitioners and other similarly placed defendants except for defendant Nos. 1 and 2 are joined as a party to the said suit only on 7th February, 2020. It is his submission that these defendants appeared before the Court approximately in July/

August, 2018. Thereafter by order dated 25th September, 2019 proceedings were directed to be conducted without written statement of these defendants. It is his submission that after passing of the said order there was unprecedented situation of Covid-19 pandemic and hence for the period in between the commencement of pandemic and thereafter till January, 2023 application could not be filed to recall the said order. It is his submission that there was no intentional act on the part of these petitioners in not preferring such application in time. It is further contention that by amending the suit after about 8 years the allegation is made against the present petitioners of they carrying encroachment on the property of the plaintiffs. In such circumstances, according to him it is fit case for setting aside the impugned order and permitting the petitioners to file written statement.

4. Learned counsel for the respondent opposed the said contention, however, it is submitted that if this Court is incline to permit the petitioners to file written statement, the suit which is pending since year 2010 be expedited.

5. There is no dispute about the fact that the suit is filed in the year 2010, however, the present petitioners were arrayed as defendant only in the year 2018. No doubt, the learned Trial Court had passed

order on 25th September, 2019 for proceeding without written statement of the petitioners and the petitioners were required to file application for recalling of the said order in time, but it is a matter of common knowledge that from March, 2020 there was nationwide lock down on account of Covid-19 pandemic situation. Though the actual lock down was effected from 20th March, 2020 but the effect of the Covid-19 situation was felt even prior thereto. In such circumstances, this Court finds no reason to reject the contention of the learned counsel for the petitioners that it is a fit case for setting aside the impugned order and to permit the petitioners to file written statement. No prejudice much less irreparable loss would be caused to the respondent/plaintiff if delay is condoned and written statement is taken on record. Moreover, it would also be in the interest of parties that their */is* get decided on merit rather than on technicalities.

6. The respondent/plaintiff, however, has suffered some inconvenience and hence, the petitioners are directed to pay costs of Rs.10,000/- to the respondent. The cost be paid before filing of the written statement in the Trial Court. Trial Court to ascertain the factum of payment of cost by the petitioners to the respondent/plaintiff before taking written statement on record. Similarly, the suit stands expedited.

7. Impugned order, therefore, quashed and set aside. Petition is allowed in above terms.

(R. M. JOSHI, J.)

ssp