



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8307 OF 2024

Sharad S/o Dajisaheb Jawalkar,
Age: 40 Years, Occu.: Self Employed,
R/o. A/p. Patoda (M.),
Tq. Ambejogai, Dist. Beed

**.. Petitioner
(Orig. Plaintiff)**

Versus

1. Smt. Meerabai W/o. Prabhakar Joshi,
Age: 74 Years, occu. H.W.,
R/o. Patoda (M), Tq. Ambajogai,
Dist. Beed
2. Geetanjali W/o Vyankat Latpate,
Ganjur near Rui Rameshwar,
Tq. & Dist. Latur
3. Akash S/o Nagnath Dhanve,
Age: 29 Years, Occu.: Agri.,
Patoda (M), Tq. Ambajogai,
Dist. Beed

**.. Respondents
(Orig. Defendants)**

...

Advocate for Petitioner:
Mr. P. B. Vaidya h/f. Mr. Rahul Pandhari Cheble

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CORAM:	ARUN R. PEDNEKER, J.
DATE:	24.09.2024

ORDER:

1. By the present petition, the petitioner is challenging the order dated 10.06.2024, passed by the learned Civil Judge, Junior Division, Ambajogai on an application below Exhibit 40 in Regular

Civil Suit No.59/2021, whereby the trial court was pleased to set aside the no written statement order against respondents no.2 and 3 and the *ex parte* order against respondent no.1 and permitting the respondents to file their written statement and proceed with the suit.

2. The petitioner is the original plaintiff, whereas the respondents are the original defendants in Regular Civil Suit No.59 of 2021. The plaintiff has instituted a suit for declaration and perpetual injunction being Regular Civil Suit No.59/2021 before the learned Civil Judge, Junior Division, Ambajogai. It is contended in the suit that deceased Prabhakar Joshi was owner and possessor of the suit property bearing G.P. House No.122/2, situated in village Patoda(M), Taluka Ambajogai, District Beed admeasuring 1023 Sq. ft. as described in the plaint. Prabhakar Joshi died issueless on 09.06.2013, leaving behind his wife Prabhavati Joshi. The plaintiff is the nephew of the deceased Prabhakar Joshi. Prabhavati Joshi along with Meerabai Joshi filed an application bearing M.A. No.150 of 2015, before the competent court at Ambajogai for issuance of legal heirship certificate. The said application was later on withdrawn by respondent no.1.

3. The civil court passed the ex parte order against respondent no.1 and no written statement order against respondents no. 2 and 3 on different dates. No evidence order against respondents no.2 and 3 was passed on 30.09.2023. Thereafter, on 14.12.2001, the court also rejected the application on behalf of respondent no.1 to grant some time to file say and written statement.

Thereafter, defendants no.1 to 3 / respondents no.1 to 3 filed application below Exhibit 40, with prayer to set aside the ex parte order against respondent no.1 and no written statement order against respondents no.2 and 3. It was contended in the application at Exhibit 40 that the defendant no.1 / respondent no.1 is old age lady, defendant no.2 / respondent no.2 is also a lady having small children and defendant no.3 / respondent no.3 is a student, as such, they could not appear and respond to the civil suit and file their written statement within time and, prayed to set aside the no written statement order and ex parte order against the said defendants.

The original plaintiff / petitioner responded to application at Exhibit 40 contending that against the defendant no.1 on 02.02.2023 order was passed to proceed *ex parte*. No written statement order was passed against defendants no.2 and 3, on

04.09.2023 and 02.02.2023 respectively. Thereafter, the plaintiff has given evidence which is also concluded and on 29.01.2024 the plaintiff has also concluded his arguments, as such, it is contended that the application at Exhibit 40 be dismissed.

4. The trial court on the basis of the material on record and that the suit involves substantial right over the property and that the defendants should have an opportunity to defend the suit and, as such, set aside the *ex parte* order and no written statement order by imposing costs of Rs.2,000/-.

5. Considering the fact situation that defendant no.1 is an old age lady and defendant no.2 is lady and defendant no.3 is a student and the claim is made over the house property, I do not consider that there were no grounds to set aside no written statement order, as such, I would not interfere with the impugned order in exercise of Article 227 of the Constitution of India.

6. The writ petition stands dismissed.

[ARUN R. PEDNEKER, J.]

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