



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

901 WRIT PETITION NO. 171 OF 2020

SARUBAI DASHRATH KOLI

VERSUS

KAMALBAI VEDU KOLI AND OTHERS

Mr.A.J. Patil, Advocate for the petitioner.

Mr.Yogesh H. Jadhav h/f. Mr. Girish Nagori, Advocate for the respondents.

CORAM : ARUN R. PEDNEKER, J.
DATED : 11.01.2024

PC :-

01. Heard learned Counsel for the parties. The suit is for partition and declaration filed by the respondents. In the said suit present petitioner is defendant No.1. Defendant No.1 did not file written statement and as such on 11.10.2017 “No WS” order was passed. The petitioner, thereafter, filed applications at Exhs.45 and 47 for setting aside the order of “No WS” dated 11.10.2017. By order dated 27.02.2019 the Civil Judge was pleased to set aside order dated 11.10.2017 subject to payment of costs of Rs. 1000/- to be paid to the plaintiffs. However, the amount was not paid and thus by order dated 02.04.2019, the suit proceeded ex-parte against defendant No.1. Defendant No.1 thereafter filed second application for setting aside the order

of ex-parte dated 02.04.2019. The Court by the impugned order held that the application is nothing but delaying tactics at the hands of defendant No.1. Said order dated 02.04.2019 is under challenge before this Court.

02. The learned Counsel appearing for the petitioner submits that the petitioner is a poor lady and she is not in a position to pay the costs also for setting aside the No WS order. He further submits that the land involved in the matter is also meager and is of not much value and she is not in a position to pay the amount. She has lost her right to file the WS.

03. The learned Counsel for the petitioner submits that he would pay the amount of costs and in accordance to that he has tendered the amount as directed by the Civil Judge by order dated 27.02.2019. The costs is handed over to the learned Counsel appearing for the original plaintiffs.

04. In view of the same, the writ petition is allowed in terms of prayer clause (B), which reads as under :-

“b) The order passed below Exh.1 in RCS No.34/2016 passed by Ld.C.J.J.D., Dharangaon dated 02/04/2019 and order below

Exh.53 and 55 dated 07/10/2019 may kindly be set aside and as per order dated 27/02/2019 passed below Exh.45 and 47, the deposit of amount of Rs.1000/- may kindly be accepted and petitioner be permitted to Exhibit the written statement which is already on record.”

05. It is taken on record that cost of Rs. 1000/- is paid. The learned Advocate for the respondents submits that unnecessarily delay is caused as the suit is pending before the Civil Judge, Junior Division, Dharangaon since 2016. Therefore, it is directed to decide the suit as expeditiously as possible and in any event within 18 months from production of the order.

06. The petition is disposed off accordingly. Needless to mention, all interim orders are vacated.

[ARUN R. PEDNEKER, J.]