

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 436 OF 2024

Ravaso Shivgonda Patil

Petitioner

.. (Defendant No.4)

Versus

Tanubai Shiva Patil and Ors.

.. Respondents

-
- Mr. Prajakt M. Arjunwadkar, Advocate for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2024.

P.C.:

- 1.** Not on Board. Mentioned. Taken on Board.
- 2.** Heard Mr. Arjunwadkar, learned Advocate for Petitioner.
- 3.** Present Writ Petition takes exception to the order dated 13.02.2023 passed below Exhibit “47” by the learned Civil Judge, Junior Division, Kurundwad.
- 4.** Regular Civil Suit No.215 of 2017 was filed by the Plaintiffs for partition, separate possession, declaration and perpetual injunction. Petitioner was impleaded as Defendant in the Suit proceedings on 10.03.2021. Petitioner was required to file his written statement by 10.06.2021. Considering the lapse of time and the written statement having not filed, Petitioner made Application before the learned Trial Court after a period of 1 year and 3 months. That Application has

been rejected by the impugned order dated 13.02.2023. The Suit is now at the stage of evidence of the Plaintiff. Petitioner before me *prima facie* appears to be one of the relatives of the parties to the Suit proceedings, at least that is what is gathered from the names of the parties.

5. Mr. Arjunwadkar would submit that though the Application was filed below Exhibit “47” for taking the WS on record and to recall no WS order, record shows that there is no specific No WS order passed by the Trial Court against the Petitioner i.e. Defendant No.4. I have perused the Writ Petition and the pleadings. The order which is impugned is dated 13.02.2023 and all it says is that the Application does not contain any reasons for the delay. Hence it stands rejected.

6. Reading of the Application which is at Exhibit “F” - page No.66 below Exhibit “47” states that if the said Written Statement is not taken on record, serious prejudice will be caused to the Applicant. Though Mr. Arjunwadkar would submit that the Application is not verbose, but it conveys the meaning that is required to be conveyed by the Applicant making the Application for taking the WS on record. Incidentally the opponent i.e. contesting party has objected to this Application and filed his reply dated 16.12.2022 which is at page No.69 of the Writ Petition. In this Reply filed by Plaintiffs it is submitted by them that if the Application of Petitioner i.e. Defendant

No.4 is allowed, costs of Rs.3,000/- should be imposed on Defendant No.4.

7. After considering the aforesaid pleadings in the impugned order, I am inclined to allow the present Writ Petition. The impugned order dated 13.02.2023 is not sustainable according to me. Delay of 1 year and 3 months is condoned by this Court.

8. Petitioner i.e. Defendant No.4 is permitted to file his WS on record and the same shall be filed by Defendant No.4 within a period of two weeks from today.

9. Needless to state that this order is not an unconditional order and Defendant No.4 i.e. Petitioner before me is directed to pay costs of Rs.3,000/- to the Plaintiffs. Receipt of payment of costs shall be placed before the learned Trial Court for further consideration of the Suit proceedings within a period of two weeks from today.

10. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]