

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.1943 OF 2020

Ratnadeep Shankar Khadke and Ors.

.. Petitioners

Versus

Sarika Namdeo Adhav and Ors.

.. Respondents

.....

- Mr. Hemant P. Ghadigaonkar, Advocate for Petitioners.

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 19, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Ghadigaonkar, learned Advocate for Petitioners.
- 3.** Perused the praecipe dated 19.04.2024 and the Writ Petition.
- 4.** Writ Petition (Stamp) No.1943 of 2019 has been filed some time in the year 2019. It is filed by the Defendant Nos.14 to 16 in Special Civil Suit No.299 of 2017. This suit is filed for partition of properties by the Plaintiff. The Writ Petitioners – Defendant Nos.14 to 16 had filed two specific applications below Exhibit-43 and Exhibit-41 before the learned Trial Court seeking leave of the Court to take on record their written statement since there was a delay on their part and the learned Trial Court had passed ‘no written statement and no say’ order against them. Both these Applications before the learned

Trial Court below Exhibits-43 and Exhibit-41 are at page Nos.36 and 34 of the Writ Petition.

5. Both these Applications have been decided by the learned Trial Court by two separate orders which are appended at page No.54 and page No.53 of the Writ Petition. The Defendants were allowed by the learned Trial Court to file their written statement on record by setting aside the 'no written statement and no say' order against them. These order were passed on 13.07.2018. Orders were conditional as they directed the Defendants to pay costs as stated in the said order.

6. Mr. Ghadigaonkar would submit that there was delay of one year once again on the part of the Defendants in complying with the aforementioned twin orders passed below Exhibit-41 and Exhibit-43. Due to the delay, Defendants filed a composite Application below Exhibit-45 which is at Exhibit-E, page No.55 of the Writ Petition. Application under Exhibit-45 sought setting aside of the costs which were awarded by the learned Trial Court. That Application was rejected by the learned Trial Court by the impugned order dated 11.06.2019. Learned Trial Court has held that sufficient time has been given to the Defendants. Defendants have not complied with the twin orders passed by the learned Trial Court below Exhibit-41 and Exhibit-43 and that Defendants are prolonging the matter. Mr. Ghadigaonkar would submit that the impugned order dated 11.06.2019 would

virtually oust and non-suit the Defendants.

7. It is seen that the suit filed before the Trial Court is a suit for partition of properties, *inter se*, between the parties. Mr. Ghadigaonkar would submit that though the present Writ Petition was filed in the year 2019 and registered in the year 2020, in the interregnum, the said Writ Petition was dismissed and it has been subsequently restored by this Court by order dated 08.03.2024. He would submit that in the interest of justice, though delay is writ large on the face of record, Defendants should be given an opportunity to file their written statement. He would rather submit that said written statement of Defendant Nos.14 to 16 has already been filed but the same is not taken on record by the learned Trial Court.

8. Considering the fact that this is a partition suit between the parties and substantive rights of all parties are involved and more specifically one of the reason being that certain construction work of the Defendant No.16 is being carried out on the suit property as stated in Defendant No.16's Application, if these Defendants are not allowed to file their written statement they may suffer.

9. However, allowing these Defendants' written statement on record will not be unconditional. The Defendants have not complied with the learned Trial Court's order on two occasions despite the learned Trial Court granting them a fair opportunity. In that view of

the matter, Defendant Nos.14 to 16 who are Writ Petitioners before me are directed to pay costs to the Plaintiff for their dereliction.

10. In view of the above observations and findings, the impugned order dated 11.06.2019 is quashed and set aside with direction to the learned Trial Court to take on record and exhibit the written statement filed by Defendant Nos.14 to 16 subject to the said Defendants paying costs of Rs.10,000/- (Rupees Ten Thousand Only) each to the Plaintiff for not abiding with Court's order, dereliction, delay and *laches* on the part of the said Defendants. Costs shall be paid to the Plaintiff by all three Defendants separately as directed and the three receipts of payment of costs shall be placed before the learned Trial Court.

11. On producing the receipt of payments of costs acknowledged by the Plaintiff, the learned Trial Court shall mark the written statements of Defendant Nos.14 to 16 on record and exhibit them in accordance with law and proceed with the trial of the suit. Considering that the suit is filed in the year 2017, learned Trial Court is directed by this Court to dispose of Regular Civil Suit No.299 of 2017 as expeditiously as possible and in any event within a period of one year from today. Parties are directed to co-operate with the learned Trial Court. Trial Court is directed not to give adjournments to the parties and to give adjournments to the parties only if they are

utmost necessary due to any emergency or exigency and learned Trial Court shall decide the Regular Civil Suit No.299 of 2017 as directed. All contentions of parties are expressly kept open. Defendant Nos.14 to 16 are warned by this Court not to delay and protract the trial and Trial Court shall keep this in mind while conducting the trial.

12. With the above directions, Writ Petition is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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