

Ajay

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

WRIT PETITION NO. 2790 OF 2024

Mohd. Mustafa Mohd. Ishaque and Ors.	.. Petitioners
Versus	
Deoba Raoba Jadhav	.. Respondent

-
- Mr. Narayan Bubna, Advocate for Petitioners.
 - Mr. Sachin Dhakephalkar a/w. Mr. Santosh Baravkar, Advocates for Respondent.

.....

CORAM : MILIND N. JADHAV, J.
DATE : APRIL 24, 2024.

P.C.:

- 1.** Heard Mr. Bubna, learned Advocate for Petitioners and Mr. Dhakephalkar, learned Advocate for Respondent.
- 2.** The present Writ Petition takes exception to the order dated 01.01.2024 passed by the learned Trial Court rejecting the Application filed by the newly impleaded Defendant Nos.11 to 13 for taking their written statement on record in view of the delay of more than 9 months. No written statement order was passed against Defendant Nos.11 to 13 on 26.04.2023. Application was filed for setting aside of the order and for their written statement to be taken on record which stands rejected by the impugned order.

3. Briefly stated, Defendant Nos.11 to 13 have been impleaded in the year 2022 at the behest of the Plaintiff when during the pendency of the Suit, Defendant Nos.1 to 10 had sold the property to the Defendant Nos.11 to 13. The reliefs prayed for by the Plaintiff in the Suit are for removal of encroachment in respect of agricultural land belonging to the Plaintiff being Gat No.434.

4. Mr. Dhakephalkar, learned Advocate on behalf of the Plaintiff who is Respondent before me resisted the Petition on the ground that during the interregnum, the entire witness action between the Plaintiff and Defendant Nos.1 to 10 stands concluded on 23.01.2024. He would therefore submit that the Suit has thereafter been placed for final arguments, however in view of the challenge maintained by Defendant Nos.11 to 13 to the impugned order dated 01.01.2024 rejecting their Application, the Suit has not proceeded thereafter. In view of the fact that Defendant Nos.11 to 13 have purchased the rights of Defendant Nos.1 to 10, therefore he would submit that the impugned order rejecting their Application has been correctly passed.

5. After hearing both the learned Advocates for some time and perusing the pleadings, it is seen that Plaintiff as *dominus litis* has impleaded Defendant Nos.11 to 13 in the year 2022. It is also seen that they were issued the Suit summons, but since their written

statement could not be filed within the prescribed time and within the extended period thereafter, the learned Trial Court was constrained to pass the order dated 26.04.2023 of “No WS” against the Defendant Nos.11 to 13. It is further seen that after a hiatus of almost 9 months, Defendant Nos.11 to 13 filed the Application for seeking condonation of delay for filing the written statement alongwith the copy of the written statement to be taken on record and that Application has been dismissed by the impugned order dated 01.01.2024.

6. In the facts of the present case, it is seen that Defendant Nos.11 to 13 were served with the Suit summons by the Plaintiff in order to ensure finality to the Suit proceedings since Defendant Nos.1 to 10 by virtue of their transaction with Defendant Nos.11 to 13 have put the Defendant Nos.11 to 13 in possession of the Suit property which is alleged to have being encroached. In that view of the matter, impleadment of Defendant Nos.11 to 13 as proper and necessary party would be in the interest of Plaintiff's case itself. However, it was also incumbent upon the Defendant Nos.11 to 13, considering their impleadment in the year 2022 to have filed their written statement on time. Dereliction and delay on the part of Defendant Nos.11 to 13 certainly has caused undue prejudice to the Plaintiff who has gone through conducting the entire trial, rather completing the trial.

7. In that view of the matter, if the written statement of Defendant Nos.11 to 13 is required to be taken on record, balance of convenience would require that the Plaintiff should be adequately compensated. Thus, in view of the fact that no party to a litigation should be non-suited, Plaintiff is required to be adequately compensated.

8. Hence, I am of the opinion that the written statement of Defendant Nos.11 to 13 shall be taken on record by the learned Trial Court. The delay of approximately 9 months stands condoned. “No WS” order dated 26.04.2023 stands quashed and set aside.

9. However, passing of such order is not unconditional and in that view of the matter, Petitioners i.e. Defendant Nos.11 to 13 are directed to pay costs of Rs.25,000/- together to the Plaintiff for the delay that has been caused. Payment of costs shall be deposited within a period of two weeks from today. Receipt of payment shall be placed on record before the Trial Court. Learned Trial Court shall take cognizance of the same and only thereafter Defendant Nos.11 to 13’s written statement shall be taken on record and pass further orders in so far as the conduct of the Suit is concerned.

10. Considering the fact that the said Suit for removal of encroachment has remained pending for the past one decade, the learned Trial Court is requested by this Court to expedite the hearing

of the Suit and decide the same as expeditiously as possible and in any event within a period of six months from today.

11. At this stage, Mr. Dhakephalkar would interup and submit that the Plaintiff is 90 years old and therefore deserves to see the fruits of the litigation and in that view of the matter persuades the Court to reduce the duration granted by this Court for an early decision in the Suit proceedings before the learned Trial Court. Considering the request made by Mr. Dhakephalkar, the learned Trial Court is directed that the present Suit shall be disposed of expeditiously without the learned Trial Court seeking any extension of time any further than what is provided for in this order. If so required, the learned Trial Court to take the hearing of the Suit on day to day basis so as to complete the hearing of Suit within a time bound programme.

12. In view of the above request made as also the advance age of the Plaintiff who is 90 years old, the learned Trial Court is requested by this Court to dispose of the pending Suit within a period of three months from today instead of six months.

13. It is clarified that the learned Trial Court shall not grant any unnecessary adjournments to the parties unless it is utmost necessary due to any emergency / exigency.

14. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

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

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2024.04.25
18:17:00 +0530