

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7864 OF 2023

Deepak Khanderao Pawar and Anr.

.. Petitioners

Versus

Narsinhabhai Mavaji Mawani

.. Respondent

.....

- Mr. Milind Deshmukh, Advocate for Petitioners.
- Mr. Sachin Gite, Advocate for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 23, 2024

P.C.:

1. Heard Mr. Deshmukh, learned Advocate for Petitioners and Mr. Gite, learned Advocate for Respondent.

2. The order under challenge in the present Writ Petition is dated 17.08.2022 passed by the learned Trial Court rejecting Application filed by Petitioners who are original Defendants in the suit proceedings.

3. On 21.01.2020 order for 'no Written Statement' came to be passed against the Petitioners. Despite having been served with the suit proceedings on 05.03.2019 admittedly, Defendants failed to file their Written Statement. Suit is filed for declaration, cancellation, possession and alternative relief in respect of suit property.

4. There is admittedly delay of approximately nine months on the part of the Defendants. Ideally the Written Statement ought to

have been filed on or before 04.04.2019 but an Application came to be preferred only when the 'no Written Statement' order was passed on 21.01.2020. Mr. Deshmukh in his usual fairness would submit that Written Statement is ready and Defendants can file said Written Statement within a period of one week from today.

5. Mr. Gite, learned Advocate appears for Plaintiff that is Respondent before me. He would submit that there is no adequate reason which has been explained by the Defendants for seeking to set aside the order dated 21.01.2020 and hence, the learned Trial Court has correctly rejected the Application on 21.01.2020.

6. I have perused the Application as also the impugned order. The reason mentioned by Petitioners is that Petitioners took some time to procure the revenue records and Mutation Entry from the Competent Authority which led to delay in filing the Written Statement. Atleast there is this reason which is given by the Petitioners in their Application. I am inclined to accept the said reason for the delay. The learned Trial Court has further held that the said delay has not been explained in appropriate manner.

7. For such a reason, the impugned order has virtually struck off the defence of the Defendants in the suit proceedings. That certainly cannot be allowed by this Court and in that view of the matter, the impugned order is quashed and set aside subject to

payment of costs of Rs.3,000/- by the Petitioners to the Kirtikar Law Library, High Court, Mumbai. Receipt of payment of costs shall be filed in the Court within two weeks from the date of the order.

8. Consequentially, Written Statement shall be accepted by the Trial Court on the record and file of Special Civil Suit No.57 of 2019 within a period of one week from today. Suit shall thereafter be proceeded strictly in accordance with law without being influenced by any observations made in this order.

9. At the joint request of Mr. Deshmukh and Mr. Gite, learned Trial Court seized with hearing of Special Civil Suit No.57 of 2019 is directed to dispose the suit as expeditiously as possible and preferably within a period of 12 months from today.

10. With the above directions, Writ Petition stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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