

Vinaa Khadpe
(P.S.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9070 OF 2022

Smt. Shantabai Shankar Shinde and anr

.. Petitioners

Versus

Shri Vitthal Sidhu Shinde and ors

.. Respondents

.....

- Mr. Rajaram Vaman Bansode, Advocate for the Petitioners.
- Mr. Jayant Gaikwaad, Advocate and Ms. Pushpa Prajapati, Advocate for the Respondents.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 16, 2024

P.C.:

- 1.** Not on Board. Mentioned. Taken on Board.
- 2.** This Writ Petition takes exception to the order dated 10 October 2018 which is the hand written order appearing on the face of an Application which is filed below exhibit 53 and appended as exhibit F at page 42 to the Petition.
- 3.** Application filed below exhibit 53 sought extension of time to file written statement which was preferred by the original Defendant Nos.1a and 1b who are Petitioner Nos.1 and 2 before me.
- 4.** That Application was rejected on two grounds viz. the written statement of the original Defendant i.e. predecessor-in-title of Defendant Nos.1a and 1b is already on record and time to file written statement after service of summons had expired and there was delay.

In respect of the first ground for rejection, no reasons have been given.

5. Mr. Bansode, learned Advocate appearing for the Petitioners has drawn my attention to the roznama dated 8 August 2018 on which date the Suit was fixed for filing of written statement of Defendant Nos.1a and 1b before the trial Court. He would submit that there is admittedly delay which has been caused in filing the written statement. It is seen that the original plaintiff and Defendant are uncle and nephew. The Suit concerns with partition of family properties.

6. This Court heard the Petitioners on 29 July 2022 and passed the following order:

“1. The petitioners are the legal heirs of original defendant in R.C.S. 81/2015.

2. The petitioners preferred an application seeking time to file written statement which is rejected by order dated 10.10.2018.

3. The only reason given in the application seeking time to file written statement, beyond a period of 90 days is that certain documents were not available.

4. It appears that although ‘no written statement’ order was passed on 10.10.2018. The application seeking setting aside ‘no written statement’ order is preferred after one year of the order, to be precise on 16.10.2019 this application is dismissed by the trial Judge by reasoned order.

5. Presently, learned counsel for the petitioners is not in a position to make available copy of proposed written statement which the petitioners wish to file. This aspect is of some relevance since the written statement of their father, in the partition suit, is already on record.

6. It further appears that the suit is at the stage of recording of evidence.

7. While I am issuing notice, the condition is that, the Petitioners shall deposit an amount of Rs.25,000/- in the Registry of this Court. I further make it clear that the said amount of Rs.25,000/- shall be paid to the plaintiffs as costs

irrespective of the outcome of the present petition.

8. If the amount of Rs.25,000/- is deposited by the petitioners within next two weeks, then and then alone, notice shall go to the respondents which is made returnable within 4 weeks after deposit of the amount.

9. If the amount of Rs.25,000/- is deposited, there shall be stay to further proceedings in the suit.

10. The Petitioners shall place on record of the learned trial Court, copy of the petition, this order and praecipe stating that the petition may be finally heard on the next date of hearing.

11. Stand over to 26.8.2022”

7. In compliance with the above order, the amount of Rs.25,000/- has been deposited by the Petitioners in this Court. By virtue of this order, the Suit proceedings are also stayed in the meanwhile.

8. Today Mr. Bansode, has drawn my attention to the reasons contained in the Writ Petition. Insofar as the issue of delay is concerned, in the interest of justice and the nature of the suit proceedings, I am inclined to accept the said reasons and allow the Petitioners to file their written statement on record of the trial Court strictly in accordance with law and considering the fact that the written statement of their predecessor-in-title is already on record.

9. Needless to state that since the Petitioners have shown their *bonafides* pursuant to the directions issued by this Court in paragraph no.7 of the above order, I permit the Respondents (original Plaintiffs) representing by Mr. Gaikwad to withdraw the amount of Rs.25,000/- along with all accrued interest thereon from the Registry of this Court

on the production of an authenticated copy of this order before the Registry.

10. Registry is directed to immediately release the amount in favour of Respondent No.1 – Shri Vitthal Sidhu Shinde who is Plaintiff no.1 on an Application and authenticated copy being placed before the Registry by the Advocate for the Respondents without recourse to the Court or within any time frame and in any event within a period of one week from today.

11. In view of the above observations and findings, order dated 10 October 2018 (exhibit F – page 42), order dated 13 October 2021 (exhibit K – page 52) and order dated 2 February 2022 (exhibit ‘L’ – page 55 shall stand quashed and set aside. Needless to state that the written statement of the Petitioners shall be filed in strict adherence to law and in accordance with law considering the written statement of their predecessor-in-title already on record.

12. Mr. Gaikwad has requested this Court to issue directions for expeditious hearing and disposal of the suit proceedings before the lower Court and such a request has to be acceded by the Court considering that the suit has remained long pending since 2015.

13. In view of the request made by Mr. Gaikwad and duly supported by Mr. Bansode, equally, the learned Civil Judge, Junior Division, Mahabaleshwar, District Satara, is directed to dispose of RCS No. 81 of 2015 as expeditiously as possible and preferably within a

period of one year. Both Advocates assure that parties shall not take unnecessary adjournments before the trial Court.

14. With the above directions, Writ Petition stands allowed.

15. Registry / parties to act on an authenticated copy of this order.

Vinaa Khadpe

[MILIND N. JADHAV, J.]

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signed by
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KHADPE
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