

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

WRIT PETITION NO.7469 OF 2024

Mumtaz Rafiq Chhagala
deceased represented through
her legal heirs

...Petitioners

vs.

Shrikant Nivrutti Kurhade & Ors.

...Respondents

....

Mr. Prashand Darandale, *for the Petitioners.*

....

CORAM : SANDEEP V. MARNE, J.

DATE : 30 JULY 2024

P.C.:

1 By this Petition Petitioners challenge order dated 19 October 2023 passed by Judge, Small Causes Court, at Pune, refusing to take Written Statement of Petitioners on record.

2 This Court issued notice to the Respondents by order dated 12 June 2024. Bailiff report indicates that the notice has duly served on Respondent Nos.1 to 3. Additionally the learned counsel appearing for the Petitioners has served Respondent Nos.1 to 3 by private service and Affidavit-of-service is filed. After services of notices on Respondents, the Petition was listed on 23 July 2024 and 29 July 2024. However none has appeared on behalf of Respondents and accordingly this Court is left with no other alternative but to proceed with hearing of the Petition.

3 It appears that the suit is instituted on 3 April 2018 against Defendant No.1-mother and Defendant Nos.2 to 6-children. Suit summons was served on them on 4 June 2018. 'No WS' order was passed on 22 October 2018. It appears that an application was moved on behalf of the Defendants for recall of 'No WS' order at Exhibit-30 which came to be allowed by order dated 10 February 2021 subject to payment of costs of Rs.500/-. It appears that despite passing of order dated 10 February 2021, Written Statement was still not filed and another application was filed at Exhibit-34 which again came to be allowed on 24 March 2021 setting aside 'No WS' order.

4 It is Petitioners' contention that Defendant No.1-mother was seriously ill on account of which steps could not be taken for filing of Written Statement. That Defendant Nos.2 to 6 are either minors or students and were not aware about the nitty gritty of the litigation. Defendant No.1-mother has expired on 9 December 2022. On account of these factors, the Written Statement could not be filed despite grant of two opportunities on 10 February 2021 and 24 March 2021.

5 It appears that after the mother's death, an application was moved by the Defendants on 11 August 2022 for permission to pay costs. The said application was rejected by order dated 5 October 2023. During the course of hearing of the suit, the advocate for the Defendants once again attempted to tender the Written Statement on 19 October 2023 and the impugned order has been passed directing that the suit shall proceed without Written Statement on behalf of Defendants. The order dated 19 October 2023 is the subject matter of the present Petition.

6 Considering the fact that Defendant No.1-mother was not keeping well for a prolonged period of time and ultimately succumbed to her illness on 9 December 2022, in my view, the case is made out for grant of an opportunity for filing of Written Statement on behalf of the Defendant Nos.2 to 6. However considering the fact that the suit is pending since the year 2018, Defendant Nos.2 to 6 will have to pay costs to the Plaintiffs for grant of opportunity to file Written Statement.

7 The Petition accordingly succeeds. Order dated 19 October 2023 passed by the Small Causes Court, Pune in Civil Suit No.144 of 2018 is set aside. Defendant Nos.2 to 6 are permitted to file Written Statement within a period of three weeks from today subject to payment of costs of Rs.20,000/- to Plaintiffs.

8 With the above directions, the Writ Petition is **allowed and disposed of.**

(SANDEEP V. MARNE, J.)

Digitally signed
by
SUDARSHAN
RAJALINGAM
KATKAM
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