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956wp6148.25

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

956 WRIT PETITION NO. 6148 OF 2025

ASHOK BABAN KUDANDE AND OTHERS

....Petitioners

VERSUS

SITARAM NARAYAN KHETMALIS

.....Respondent

Mr. Sudheer Ramdas Zambare, Advocate for the petitioners

CORAM : KISHORE C. SANT, J.

DATE : 07th MAY, 2025

P. C.

1. Heard.

2. The challenge in the petition is to an order dated 12-03-2025 passed by the learned CJSD, Shrigonda on application below Exh.24 in RCS No. 81/22. By way of impugned order the learned Judge rejected the application of the petitioner for setting aside the No W. S. order and to allow him to file written statement.

3. From the record it is appearing that the petitioner appeared in the suit on 16-04-2022. No W. S. order was passed on 22-06-2022. The petitioner filed an application for setting aside No. W. S. order passed on 03-12-2024. In the application it is stated that the petitioner could not get relevant documents and information within time and therefore, there is delay caused in filing the application. The respondent brought on record that the petitioner had appeared in the suit on 16-04-2022. The impugned order was passed on 22-06-2022. Thereafter on various dates, the petitioner was present in the court. Still no No W. S. order was passed. The respondents, thus prays for rejection of the application. It is further stated in reply that, the order is passed only when the plaintiff filed an affidavit of evidence and application was filed seeking time for cross-examination. Even the cross-examination was not taken and thereafter no cross order is also passed. It is thus, stated that deliberately the petitioner has not filed the written statement and now after much delay has filed this application.

4. The court considered both the sides and rejected the application.

5. The learned advocate for the petitioner vehemently argued that the petitioners valuable right is taken away. The suit is filed for injunction. Unless the petitioner is allowed to place on record the written statement, he cannot prove his case. The petitioner would thus lose opportunity forever. He submits that the provisions of order 8 Rule 1 are direct in nature and is not mandatory. The persons should not suffer merely on account of delay. He thus, prays for allowing the writ petition.

6. This court has gone through the application and the reply of the respondents. This court has also seen the order passed by the trial court. The dates are already mentioned in the forgoing paras. The dates itself indicate that the petitioner has not taken any steps to get No W. S. order set aside for about two and half years. In the meantime, he appeared on various dates in the court. He had even prayed for time to cross examine the

witness of the plaintiff. In the application for setting aside no specific reason is assigned. All these things clearly shows that it is casual approach of the petitioner which has resulted in the impugned order. It is tried to be submitted during the course of the argument that father of the petitioner was not well and subsequently he died. However, there is no such reason stated in the application. Even no date of death is mentioned even in this petition and even the advocate for the petitioner could not tell the dates today.

7. This court thus finds that the petitioner deserves no sympathy. No illegality is found in the order passed by the learned trial court. The writ petition, therefore, stands dismissed.

8. The learned trial court to try to dispose off the suit as early as possible.

[KISHORE C. SANT, J.]