



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

69 WRIT PETITION NO. 12727 OF 2023

Meera Raosaheb Giramkar And Another

VERSUS

Ambadas Dashrath Malusare And Others

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Mr. Ajay G. Talhar, Advocate for the Petitioners.

Mr. Rahul A. Tambe, Advocate for Respondent No.1.

CORAM : KISHORE C. SANT, J.

DATE : 17<sup>th</sup> MARCH 2025

PC :-

1. Heard the learned Advocate for the parties.
2. The petitioners are added defendant Nos.10 and 11 in Regular Civil Suit No. 310 of 2019 filed by the present respondent No.1 in the Court of learned Civil Judge Senior Division, Shrigonda Dist. Ahmednagar, for partition and separate possession mainly against the respondent Nos.2 to 10. The present petitioners are added as party as they purchased some of the suit properties on 10<sup>th</sup> February 2020 and 11<sup>th</sup> February 2020 and, therefore, they were added. They were served on 21<sup>st</sup> March 2022. However, they did not file written statement in

time. The learned trial Judge, therefore, passed an order of 'no say'. Petitioners, thereafter, filed an application Exh.63 on 10<sup>th</sup> January 2023 for setting aside 'no written statement' order and for taking on record the written statement. the plaintiff filed say stating that the reasons stated in the application are totally falls even to the knowledge of the defendant No.10 and 11. They had stated the reason of illness of mother-in-law who, in fact, died much prior to service of summons i.e. 25<sup>th</sup> July 2021. About the health of the defendant also nothing is stated and no document is annexed to show that he was not well. It is further contended that in the meantime, they had even filed a suit seeking injunction in the Court of learned Civil Judge Junior Division in RCS No. 317 of 2020. In the said suit, the plaintiff filed an application for stay to the suit under Section 10 of CPC. It was rejected by the trial Court. However, allowed by this Court in writ petition. The said order is confirmed in the SLP by the Hon'ble Apex Court and it is only thereafter, the petitioners have filed an application. After hearing the parties, the trial Court rejected the application by order dated 26<sup>th</sup> July 2023 and, thus, the petitioners before this Court.

3. Learned Advocate Mr.Talhar for the petitioners vehemently argued that the petitioners have valuable right to file written statement. There is delay caused on their part. However, the same can be condoned by putting certain conditions on the petitioners. The petitioners have purchased some of the properties and, thus, now joint is created in their favour to contest the suit. On technical ground, the petitioners may not be deprived of their right contest. About filing of another suit and the order passed by this Court and Hon'ble Apex Court, he does not dispute the same.

4. The learned Advocate Mr.Tambe appearing for Respondent vehemently opposed the petition. He submits that the conduct of the petitioners would show that now they want to lead the case as put in their civil suit which is now stayed. They are also likely file counter-claim under the garb of written statement which cannot be allowed. It is his submission that only because, the suit of the petitioners is stayed, now, they have filed written statement and counter-claim. By way of the same, in fact, they are trying to put a case of their suit by way of W.S. It is for this reason, the learned trial Court rightly passed an order. There is

no perversity or illegality in the order. He prays for rejection of the petition.

5. On going through the record it is clear that the petitioners have not shown due diligence. Though the suit summons were served on 21<sup>st</sup> March 2022 still they did not bother to file written statement. If their difficulties are to be accepted, it is contrary to their conduct as during the said period only they filed Civil Suit No.317 of 2020 on 14<sup>th</sup> December 2020. This clearly negatives their case of delay. However, just to see that they are not deprived of opportunity to contest the suit, this Court is inclined to allow the petition with some condition. Hence, the following order.

### **ORDER**

- (i) Writ petition stands allowed.
- (ii) Petitioners to pay costs of Rs.10,000/- each, to the plaintiff i.e. Respondent no.1 within two weeks from today. Subject to that application Exh.63 in RCS No.310 of 2019 pending before the learned Joint Civil Judge Senior Division, Shrigonda stands allowed. Written statement is taken on record.

(iii) Needless to say that, the trial Court shall consider the same in view of order 8 of CPC. Every aspect will be considered strictly in accordance with law.

(iv) With this writ petition stands disposed off.

(v) Since the suit is of 2019, it is expected of the trial Court to dispose it off as early as possible and preferably within (18) months from today.

**[KISHORE C. SANT, J.]**