IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 1466 OF 2025

Shripad Abasaheb Khedkar
VERSUS
Shrivallabh Abasaheb Khedkar and others
...
Advocate for the Petitioner : Mr. Bhargav B. Kulkarni
Advocate for Respondent Nos. 1 to 3 : Mr. Sameer S. Kurundkar
Advocate for Respondent No.6 : Mr. Ankush N. Nagargoje
.....

CORAM : **SANJAY A. DESHMUKH, J.**
DATED : **08th OCTOBER, 2026**

PER COURT :-

1. Heard learned advocates for the both sides.

2. This writ petition is filed for challenging the order passed by the learned Civil Judge, Junior Division, Shirur Kasar, Tq. Shirur Kasar, District Beed, below Exh.77 in Regular Civil Suit No. 27 of 2011, dated 24.11.2024.

3. Brief facts of the case, which are relevant to decide this writ petition, are as under:-

4. Respondent Nos. 1 to 3 herein filed Regular Civil Suit No. 27 of 2011 for partition. In the said suit, the present petitioner is defendant No.2. Since, he did not file written statement within three

months, therefore, “No W.S. “ order was passed on 23.10.2011. After 12 years, an application Exh.77 for setting aside the “No W.S.” order was filed by this petitioner on 04.07.2023. The said application was rejected by the trial court. The suit is now posted for leading evidence on the part of the plaintiffs.

5. Learned advocate for the petitioner submitted that if “No W.S.” order is not set aside, a great prejudice would be caused to the petitioner and he cannot put his defence. It is a civil suit in which the rights of the parties are to be decided on merits. No doubt, the written statement was not filed for more than 12 yeas, however, the petitioner was not advised by the advocates, who are practicing in rural area to proceed against the “No W.S.” order. If the substantial right of the petitioner to contest the suit is not exercised, he will suffer irreparable loss which cannot be determined and compensated in terms of money. It is lastly prayed to allow the writ petition in the interest of justice by giving an opportunity to the petitioner to file written statement and to lead the evidence.

6. Learned advocate for the petitioner is relying upon the precedential law in the case of ***Kalpana Udhav Disle vs. Gansh Udhav Disle and others, 2011 LJSoft (BOM) 1624,*** in which in para 9, it is held as under:-

> *"9 I have given due consideration to the rival submissions. The Hon'ble Supreme Court in catena of decisions held that, provisions of Order VIII, Rule 1 of the Code of Civil Procedure are hand made rules to regulate procedure which cannot take away substantial rights of the parties to contest the suit. In the instant case, it is not in dispute that the petitioner herein delivered child on 06.10.2009. The concerned Court taking liberal view in the matter should have allowed the petitioner herein to file Written Statement. The order impugned in this writ petition refusing to set aside "No W.S." order would certainly affect on the substantial right of the petitioner to contest the suit and file written statement. In a given case, the Court can allow the party to file Written Statement by imposing reasonable costs on the concerned party to compensate other side. However, interpretation given by the trial Court in the impugned order is too technical and would certainly cause prejudice to the petitioner."*

7. Learned advocates for respondents strongly opposed the writ petition and submitted that there is no satisfactory explanation for the delay of more than 12 years in filing the application for setting aside the "No W.S." order. It is further submitted that there is no justification or sufficient cause for condoning such an inordinate delay by taking a liberal view. The reasons recorded and findings given by the learned trial court are legal and correct, and no interference with the impugned order is warranted. It is lastly prayed to dismiss the writ petition.

8. Perused the order passed below Exh.77 and the grounds raised in the application. After considering the entire matter, this Court is of the view that if the petitioner is not allowed to put his defence, certainly, it would affect the substantial right and the suit filed against him is bound to be decreed. The lis must be decided on merit. No doubt, there is delay of more than 12 years caused in filing an application for setting aside the “No W.S.” order but for that the respondents herein can be compensated in terms of money by giving direction to the petitioner to deposit an amount of Rs.14,000/- towards costs, within four weeks from today. Out of the said amount of costs, an amount of Rs.7000/- be paid to original plaintiffs i.e. respondent Nos.1 to 3 herein, equally and an amount of Rs.7000/- be paid to original defendant No.4 i.e. respondent No.6 herein.

9. Considering all these reasons, this court is of the view that the impugned order is not sustainable and it deserves to be set aside. The writ petition deserves to be allowed and the application Exh.77 deserves to be allowed. Hence, the following order:-

O R D E R

I. The writ petition is allowed.

II. The order passed below Exh.77 dated 16.11.2024 is set aside.

III. The application Exh.77 is allowed with condition that the petitioner to deposit Rs.14,000/- in the trial court within four weeks from today, failing which this writ petition shall be deemed to be dismissed without further reference to this court. Out of the said amount of costs, an amount of Rs.7000/- be paid to original plaintiffs i.e. respondent Nos.1 to 3 herein, equally and an amount of Rs.7000/- be paid to original defendant No.4 i.e. respondent No.6 herein.

III. The suit is now more than 15 years old. The trial court is directed to decide the suit as expeditiously as possible and in any case within a period of one year from today, by keeping the hearing of the said suit at least once in a week, regularly.

IV. It is clarified that if any matter is expedited by the Hon'ble Supreme Court or this Court earlier, the trial court shall decide those matters first and then proceed to decide the suit in question, as directed above.

(SANJAY A. DESHMUKH, J.)

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