

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

WRIT PETITION NO. 1834 OF 2012

Anjanabai wd/o Shalikram Jaiswal,
age 70 yrs, occ. Nil,
Residing at House No.5/5/48,
Swarg, Jublee Park, Aurangabad.

Petitioner
[ori.deft no.4]

VERSUS

Smt. Sushma @ Sulbha w/o Ganeshlal Jaiswal,
age 41 yrs, occ. Household,
Residing at Main road, Georai,
Taluka Georai, District Beed.

Respondent
[orig. plaintiff]

...

Mr. Surve Hemant Advocate for petitioner.
Adv D K Kulkarni For R Sole

...

CORAM : R.M.BORDE,J.
DATE : 29th FEBRUARY, 2012.

ORAL JUDGMENT :-

1. Heard respective counsel appearing for the parties.
Leave to add prayer.
2. Rule. With the consent of the parties, petition is taken
up for final disposal at admission stage.

3. The original defendant nos.1 and 4 presented an application at Exh.30 in RCS No.1017/2009 requesting the trial court to set aside the 'No W.S.' order passed earlier on 15.7.2010 and permit the defendants to present their written statement. The application tendered by defendant no.1 came to be allowed however, application tendered by the defendant no.4 has been rejected with costs quantified at Rs.500/-. Trial Court while rejecting the application has recorded that there is already an order to proceed ex parte against defendant no.4 and there is no prayer made in the application for setting aside said order and as such application tendered by the defendant no.4 cannot be considered. Since the defendant no.4 in the instant petition has requested for setting aside the order passed by the trial court to proceed against defendant no.4, the prayer made by said defendant can be considered at this stage as trial court has already passed an order setting aside the 'no ws' order passed on 15.7.2010 as against defendant no.1 and permitting the defendant no.1 to present written statement on record. Ends of justice would be met if the defendant no.4 is also permitted to place his written statement on record along with defendant no.1. Defence of the defendant no.1 as well as defendant no.4 is common and identical. In this view of the matter, I deem it appropriate to allow this writ petition and set aside the part of the order denying leave to defendant no.4 to present his written statement on record.

4. Writ Petition is thus allowed. Order passed by the trial court below exh.30 in RCS No.1017/2009 is set aside to the extent of refusal by trial court to permit defendant no.4 to tender written

statement and directing her to pay costs of Rs.500/-. Application tendered by defendant no.4 requesting the court to set aside the 'No WS' Order and for acceptance of her written statement presented at exh.30 shall be deemed to have been allowed. Order passed by the trial court directing to proceed exparte against defendant no.4 below exh.1 also stands quashed and set aside. Rule is accordingly made absolute. There shall be no order as to costs. Trial court is directed to decide pending suit expeditiously.

(R. M. BORDE)
JUDGE

...

aaa/1834