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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2309 OF 2015

Ganesh s/o Shankarrao Waghmare

PETITIONER

VERSUS

Parwatibai w/o Mugaji Palaskar & others

RESPONDENTS

.....
Mr. V. S. Panpatte, Advocate for the petitioner
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 1st SEPTEMBER, 2015

ORDER :

1. Despite service and indication by the court, under its order dated 2nd March, 2015, that the petition is likely to be taken up for decision at admission stage, no appearance has been put in on behalf of the respondents.
2. Heard learned advocate for the petitioner.
3. This court, while aforesaid order has been passed, had also indicated that the matter will be considered on payment of amount of Rs.5000/-. Accordingly, it appears that said deposit has been made in the trial court.
4. After hearing learned advocate for the petitioner it appears

that “no written statement order” had been passed on 21st June, 2014 and application, for setting the same aside, came to be moved on 7th January, 2015, praying for recall of the order of “no written statement” and permit the petitioner / defendant No.2 to file written statement. Lescintilatearned advocate for the petitioner refers to the impugned order passed by the trial court dated 7th January, 2015, which reads as under-

“Seen application & say filed by the petitioner. Application Exh.29 for time to file W.S. Already rejected on 21.06.14, since then respondent not filed W.S. There is no justification for inordinate delay - Rejected”

5. Learned advocate for the petitioner further draws attention to the application filed for setting aside no written statement order, referring to various particulars in the same and he submits that having regard to the same, the application ought to have been considered leniently. He submits that his right of defence to a considerable extent would stand debilitated, if he is not allowed to file written statement. He submits that he has various defences available. He further refers to that these are not proceedings strictly covered by the Civil Procedure Code. He, therefore, urges for leniency and grant of the writ petition.

6. Having regard to that the application refers to various aspects under which it is contended that the petitioner could not

make arrangement earlier to file written statement and those are not seriously disputed even under the say filed by the respondents and further that the impugned order does not depict consideration of the contents of the application, and since there is no resistance to the contentions and averments in the writ petition, to a large extent indicating that the respondents do not seriously resist the application filed for recall and setting aside of the order of no written statement dated 21st June, 2015, I deem it appropriate to grant the writ petition.

7. Writ petition, as such, stands granted in terms of prayer clause "B" and stands disposed of on the condition that the amount of Rs.5000/- deposited by the petitioner in the trial court, be appropriated towards costs, to be paid to the respondent – claimants. The amount of Rs.5000/- as such, be allowed to be withdrawn by the respondents-claimants by the trial court.

[SUNIL P. DESHMUKH, J.]