

,IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO. 3124 OF 2015

Education Solution, proprietary ship firm and anr. Petitioners
vs
Shri Sudhakar Bhagwan Chaudhari Respondent

Mr. Girish V. Wani, Advocate for petitioners
Mr. A.P. Bhandari, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
22ND JULY, 2015

ORDER:

1. Petition has been moved against order dated 04-03-2015 on Exhibit-50 in summary suit no. 3 of 2014, passed by 3rd Joint Civil Judge, Senior Division, Jalgaon.
2. Exhibit-50 had been moved by defendants for setting aside order dated 04-12-2014 passed on Exhibits-1 and 48. Order on Exhibit-1 had been passed, declining leave to defend the suit, for, defendants had not applied for such leave within a period of ten days from the date of service of summons of judgment on them.
3. It appears that defendants purported to rely on Exhibit-7 for the purpose of seeking leave to defend the suit pursuant to the relevant rules under Order XXXVII of the Code of Civil Procedure. However, the request appears not to have been considered by the court and the application was simply filed since the same was made even before the summons for judgment and it was for seeking time to file written statement.

4. Exhibit-48 had been moved by plaintiff to keep the matter for judgment pursuant to relevant rules under Order XXXVII of the Code of Civil Procedure. Thus, in effect, orders on Exhibit-1 and Exhibit-48 are the subject-matter of challenge in writ petition

5. After hearing learned counsel for some time, parties resile to a situation whereunder the petitioner proposes to deposit a sum of ₹ 18,50,000/- in the trial court as a condition precedent for consideration of his request for condonation of delay for leave to defend as well as to file written statement.

6. Having regard to the reasonable approach shown by the parties, I think writ petition deserves positive consideration. Delay in seeking leave to defend as such shall stand condoned and order on Exhibit-48 stands set aside.

7. Writ petition, as such, is allowed. Rule made absolute in terms of prayer clause (B) subject, of course, to the aforesaid condition that the defendants shall deposit a sum of ₹ 18,50,000/- in the trial court within a period of four weeks from date of receipt of writ of this order.

SUNIL P. DESHMUKH, J.

pnd