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

WRIT PETITION NO. 3116 OF 2014

Dhondibhau Savaleram Tarte
(Deceased) through L.Rs.,

1A. Bandu S/o Dhondibhau Tarte,
Age: 45 years, Occu: Agril.,

1B. Balu S/o Dhondibhau Tarte,
Age: 32 years, Occu: Agril.,

Both R/o: Mhasne, Tq. Parner,
Dist. Ahmednagar

....PETITIONERS

VERSUS

1. Haribhau S/o Rambhau Zarekar,
Age: 60 years, Occu: Labour,

2. Bharat S/o Rambhau Zarekar,
Age: 48 years, Occu: Agril.,

Both R/o: Mhasne, Tq. Parner,
Dist. Ahmednagar,
At present R/o: Chal No. 278,
Kamraj Nagar, Vasantao Naik Road,
Ghatkopar (West)
Mumbai-400077

3. The Collector, Ahmednagar

....RESPONDENTS

Mr Hemant U. Dhage, Advocate for petitioners;
Mr V. B. Garud, Advocate for respondent Nos. 1 and 2;
Mr R. V. Dasalkar, Asstt. Govt. Pleader for respondent No. 3

CORAM : N.W. SAMBRE, J.

DATE : 2nd December, 2015

ORAL ORDER :

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The petitioners are the legal representatives of original defendant no.1 to Regular Civil Suit No.400 of 2010, who had filed his written statement at Exh.26. After the death of original defendant no.1, the petitioners were added as his legal representatives and as such, sought adjournment for filing written statement. The Trial Court, having noticed that the petitioners are not filing their written statement, passed order on 16th October, 2012 directing that the suit shall proceed against them “without written statement”. Subsequent thereto, on 6th March, 2013, application Exh.44 came to be filed by the petitioners for setting aside “no written statement” order and for permission to place on record the written statement. The application Exh.44 came to be rejected by order dated 1st February, 2014, passed by 5th Joint Civil Judge Senior Division, Ahmednagar. Thus, the present petition.

2. Learned Counsel appearing on behalf of the petitioners-original defendants would urge that the delay caused in filing written statement and moving an application for setting aside of “no written statement” order, was unintentional and bona fide, as according to the petitioners, the situation as was existing in the village prompted them to leave the village and as such, written statement was not filed for a period of five months. According to him, in view of the law laid down by the Apex Court, in the matter of **Sambhaji & ors. vs. Gangabai & ors.**, reported in **2009 (1) Bom. C.R. 81** and in the background of scheme of Order VIII of the Code of Civil Procedure, latitude is required to be shown to the petitioners-defendants by accepting their written statement on record. According to the

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petitioners, they are ready and willing to abide by such conditions as shall be imposed by this Court.

3. The claim is opposed by Mr Garud, learned Counsel appearing on behalf of respondents no.1 and 2 – original plaintiffs, on the ground that the petitioners are trying to protract the litigation, which is pending before the Trial Court. According to him, the ground of hardship sought to be espoused, is an excuse for not filing written statement, is far away from truth and is *mala fide*. He would urge that once written statement is not filed within thirty days and further extended another sixty days; total ninety days, the Court should be slow in accepting the written statement. According to him, the petition, therefore, is liable to be dismissed.

4. Having considered rival submissions, it is, no doubt, true that provisions of Order VIII, Rule 1 of the Code impose a condition, that the written statement should be filed within a period of thirty days from the date of service of summons, however, a discretion lies with the Court to accept the same within a period of ninety days. Even otherwise, if a good cause is shown, it is open for the court to accept written statement after expiry of period of ninety days, provided trial in the suit has not reached at advanced stage. It is required to be noted that “no written statement” order in the present case came to be passed on 16th October, 2012 and it is after a period of more than four months, written statement is sought to be placed on record. It is required to be noted that the trial in the suit has not commenced, as such, no prejudice will be caused, in case if written

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statement is permitted to be placed on record, particularly having regard to the law cited and relied upon by the learned Counsel appearing on behalf of the petitioners, in the matter of Sambhaji & ors. (supra).

5. In view thereof, order dated 1st February, 2014, passed by 5th Joint Civil Judge Senior Division, Ahmednagar, below Exh.44, in Regular Civil Suit No.400 of 2010, is set aside and the application Exh.44 stands allowed, subject to payment of costs of Rs.3,500/- to be deposited before the learned Trial Court, within a period of two weeks from today. On deposit of costs, respondents no.1 & 2 – plaintiffs will be entitled to withdraw the same.

Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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