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

WRIT PETITION NO. 9513 OF 2014

1. Rukhmabai w/o Bhivraji Karewad,
Age: 40 years., Occu: Agri.
2. Bhivraji s/o Ramji Karewad,
Age: 45 years., Occu: Agri.
3. Gnyanu s/o Bhujanga Yetkalwad,
Age: 55 years., Occu: Agri.
4. Laxmibai w/o Pandurang Ghesewad,
Age: 35 years., Occu: Household
5. Sarjabai s/o Bhivraji Chavan,
Age: 45 years., Occu: Agri.

All R/o : Rajewadi, Hadgaon,
Tq. Hadgaon, Dist. Nanded

..PETITIONERS

(Orig. Defendant Nos. 5 to 9)

VERSUS

1. Venkati s/o Gangaram Jinkalwad,
Age: 35 years, Occu: Agri.,
R/o : Pimpalgaon, Tq. Hadgaon,
at present residing at Mendka,
Tq. Mudkhed, Dist. Nanded
2. Hoshanna s/o Dnyanu Jinkalwad,
Age: 73 years, Occu: Agri.,
R/o : Pimpalgaon, Hadgaon,
Tq. Hadgaon, Dist. Nanded
3. Dnyanoba s/o Ganpati Jinkalwad,
Age: 50 years, Occu: Agri.,
R/o : Pimpalgaon, Hadgaon,
Tq. Hadgaon, Dist. Nanded
4. Digambar s/o Ganpati Jinkalwad,
Age: 45 years, Occu: Agri.,
R/o : Pimpalgaon, Hadgaon,
Tq. Hadgaon, Dist. Nanded

..(Orig. Plaintiff)

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5. Vishwanath s/o Ganpati Jinkalwad,
Age: 41 years, Occu: Agri.,
R/o : Pimpalgaon, Hadgaon,
Tq. Hadgaon, Dist. Nanded

**(Respondent Nos. 2 to 5 deleted
as per leave granted by Hon'ble
Court on 12/11/2014)**

..RESPONDENTS

Mr Amit A. Mukhedkar, Advocate for petitioners;
Mr M. M. Parghane, Advocate holding for Mr G. G. Kadam, Advocate for
respondent No. 1

CORAM : N.W. SAMBRE, J.

DATE : 18th November, 2015

ORAL ORDER :

The prayer of the petitioners for setting aside “no written statement” order is rejected by the order dated 10th July, 2014, passed by Civil Judge Junior Division, Hadgaon, in Regular Civil Suit No.101 of 2011.

2. Learned Counsel appearing on behalf of the petitioners, while trying to make out a case, would urge that the petitioners were unable to file written statement in the suit, in view of communication gap and misunderstanding which has arisen therefrom. He would then urge that since the trial in the suit has not commenced, the petitioners shall file the written statement at first instance, if this Court permits and further submits to the jurisdiction of this Court by stating that they shall abide by such conditions as this Court would order.

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3. Learned Counsel appearing on behalf of the respondent has opposed the prayer on the ground that the petitioners cannot be permitted to file the written statement as per their convenience and leisure. He then would urge that enough opportunity was given to the petitioners to file written statement.

4. Having considered the rival submissions, it is noted that the petitioners, who are illiterate, have specifically come out with such ground of misunderstanding between themselves as regards filing of the written statement before the learned Trial Court. The fact remains that the trial in the suit is yet to commence.

5. In the light of above, in my opinion, it will be appropriate, in the interest of justice, to grant opportunity to the present petitioners to file written statement, by setting aside the order impugned herein. Thus, I pass following order :-

The order dated 10th July, 2014, passed by Civil Judge Junior Division, Hadgaon, below Exh.53, in Regular Civil suit No.101 of 2011, is set aside.

The application Exh.53 stands allowed, subject to payment of costs of Rs.10,000/-, of which Rs.5,000/- is already deposited by the petitioners in the Trial Court. The petitioners shall deposit the balance amount of Rs.5,000/-, within a period of two weeks from today. The respondent will

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be at liberty to withdraw the same. The petitioners shall tender the written statement along with costs, within a period of two weeks from today.

Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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