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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11747 OF 2014

Sayed Minya Sayed Munir and another. ..Petitioners

-*Versus*-

Maimunabi Syed Moosa and others. ..Respondents

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Mr.S.A.G.Qureshi, Advocate for the Petitioners.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th January, 2015

Per Court:

1 The Petitioners are the original Defendants in RCS No.26/2008 (old RCS No.397/2005). They had engaged an Advocate in the matter and who had also filed his Vakilpatra at Exhibit-15 on 29.10.2005.

2 Since no Written Statement was filed by the Petitioners, No Written Statement Order was passed on 18.01.2007 by the same Court at Jalna.

3 The Petitioners submit that subsequently the matter was transferred to the Court at Badnapur in 2008 and registered as RCS No.26/2008. The Petitioners reside at Gawandi Mohalla, Badnapur.

4 The application Exhibit-57 dated 22.10.2010 was presented before the Court on 20.11.2010. The prayer was made for recalling of the No Written Statement Order. The Written Statement was not tendered along with the said application. The Petitioners further submit that till the date of the filing of this Writ Petition on 14.11.2014, the Written Statement was not tendered before the Trial Court.

5 By the impugned order dated 11.07.2013, the application Exhibit-57 was rejected. This Writ Petition is filed after 16 months of the passing of the impugned order.

6 The Petitioners contend that because of poverty they had not contacted their Advocate when the matter was before the Jalna Court and no written statement order was passed on 18.01.2007. So also, their Advocate did not inform them about the filing of the Written Statement. The Petitioners are daily wagers who perform masonry work. Since the Petitioners cannot afford to pay more costs, the costs of Rs.500/- be imposed on them and they be allowed to file their Written Statement by recalling No Written Statement Order dated 18.01.2007.

7 Having heard the learned counsel appearing for the

Petitioners, I have gone through the impugned order and the petition paper book. Having engaged an Advocate who had filed his Vakilpatra, the Petitioners cannot singularly blame the Advocate for having not filed the Written Statement. Unless they would brief the Advocate and have the Written Statement prepared and duly signed and verified, the Written Statement could not have been filed. No Written Statement Order was passed on 18.01.2007 when the proceedings were before the Jalna Court. The Petitioners, therefore, cannot bank on the ground of transfer of case to the Badnapur Court as the reason for not filing the Written Statement.

8 The application for setting aside No Written Statement Order was tendered on 20.11.2010 before the Trial Court. I have gone through the said application. The reasons set out are that the Petitioners are poor persons and their Advocate did not inform them about the progress in the matter. I do not find that these reasons would justify either non filing of the Written Statement or preferring an application to vacate No Written Statement Order. The application Exhibit-57 has been filed after three years and nine months of the passing of No Written Statement Order. Even the impugned order dated 11.07.2013 is sought to be challenged on 14.11.2014.

9 In the light of the above, I do not find that this Writ Petition

deserves to be entertained. The Writ Petition is, therefore, dismissed. No order as to costs.

(**RAVINDRA V. GHUGE, J.**)