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

WRIT PETITION NO.24 OF 2015

Neharu Shankarrao Salunke.

..Petitioner

-Versus-

Dinkar Vinayakrao Deshmukh.

..Respondent

.....

Mr.N.D.Kendre, Advocate for the Petitioner.

Mr.R.K.Ashtekar, Advocate for the Respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th January, 2015

Per Court:

1 The Petitioner is the original Defendant in Special Civil Suit No.88/2013 pending before the learned Civil Judge, Senior Division, Latur. The suit is filed for recovery of amount. The order to proceed ex-parte and without Written Statement of the Petitioner was passed on 10.03.2014. On 28.07.2014 an application Exhibit-22 was filed for seeking condonation of delay of 167 days in filing the Written Statement. The application Exhibit-24 was filed for setting aside the No Written Statement and ex-parte order dated 10.03.2014. The application Exhibit-26 was filed for filing the Written Statement which has been tendered before the Court on 28.07.2014.

2 The Petitioner contends that due to some confusion as regards the proceedings under Section 138 of the Negotiable Instruments Act pending before the learned Judicial Magistrate First Class, Latur and the present Special Civil Suit proceedings, the Petitioner was unable to perceive that the Written Statement was required to be filed urgently in

Special Civil Suit No.88/2013.

3 It is further submitted that the delay has not been caused deliberately. No laches can be attributed to the Petitioner. Non filing of the Written Statement is not in the interest of the Petitioner. A permanent deficiency would remain in the proceedings and the doors of the court would be closed on the case of the Petitioner if the Written Statement is not allowed. It is, therefore, prayed that this Writ Petition be allowed and the impugned order dated 31.10.2014 passed below Exhibits 22, 24 and 26 be set aside.

4 Mr.Ashtekar, learned Advocate has appeared on caveat for the sole Respondent. He submits that the criminal proceeding under Section 138 of the Negotiable Instruments Act is pending against the Petitioner in connection with dishonouring of the cheque. The amount of Rs.5,50,500/- is to be recovered from the Petitioner and the interest is mounting. The delay in filing the Written Statement is deliberate so as to delay the proceedings and cause inconvenience and hardship to the Respondent. In the absence of any pleadings as regards due diligence, the Written Statement should not be permitted to be filed and the Petitioner is the Architect of this situation. He, therefore, prays for dismissal of the Writ Petition with costs.

5 Having heard the learned counsel appearing for the parties and having considered the fact situation before me, in my view, the Special Civil Suit No.88/2013 would proceed without the Written Statement of the Petitioner. It would be virtually an ex-parte adjudication of the matter. The delay is of 167 days. No doubt, the Petitioner has been negligent and the laxity on his part cannot be appreciated. However, declining an opportunity to file the Written Statement, in these circumstances, would render a permanent deficiency in the proceedings. The hardship caused to the Respondent can be compensated with costs. By

enabling the Petitioner to file the Written Statement, the proceedings pending before the learned Trial Court can be adjudicated on its merits.

6 The Apex Court in the case of *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and others* reported at 1987(2) SCC 107, has held that if laches or mischievous acts can not be attributed to the litigant, the delay needs to be considered liberally.

7 In the light of the above, this Writ Petition is partly allowed. The impugned order dated 31.10.2014 is quashed and set aside. The applications Exhibits 22, 24 and 26 stand allowed. The Written Statement filed by the Petitioner along with the application Exhibit-26 be taken on record by the Trial Court. The Petitioner shall deposit an amount of Rs.15,000/- (Rupees Fifteen Thousand) before the Trial Court on or before 31st January, 2015, which the sole Respondent shall be at liberty to withdraw without any condition.

(RAVINDRA V. GHUGE, J.)