

(1)

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

WRIT PETITION NO. 1262 OF 2015

Amar Kirti Mehta,
Owner & Proprietary
Amar Construction, Pune,
Age: 37 years, Occu: Contractor,
R/o. D2/704, Gagan Vihar Society,
Bibvewadi Kondava Road,
near Gangadham, Market yard,
Pune 411037

..PETITIONER
(Orig. Defendant)

VERSUS

Tilaknagar Industries Ltd.,
Tilaknagar, Tq. Shrirampur,
Dist. Ahmednagar
Through Legal Manager
Shri. Vaibhav Walmikrao Kulkarni,
Age: 40 years, Occu: Service,
R/o. Tiliknagar, Tq. Shrirampur,
Dist. Ahmednagar

..RESPONDENT
(Orig. Plaintiff)

Mr K. B. Autade, Advocate for petitioner;
Mr Nitin S. Choudhary, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 18th November, 2015

ORAL ORDER :

In a suit for recovery, the petitioner – defendant appeared on 13th March, 2014 and thereafter sought adjournments for filing written statement. Regular Civil Suit No.27 of 2013 thereafter proceeded further “without written statement” against the petitioner and as such, the petitioner, tendered his written statement on 18th September, 2014, along

(2)

with an application seeking permission to file written statement. The said application came to be rejected by an order dated 7th November, 2015, passed by Civil Judge Senior Division, Shrirampur. Thus, the present petition.

2. Learned Counsel appearing on behalf of the petitioner, while trying to make out a case for showing indulgence, would urge that the learned Trial Court should have allowed application Exh.19 and accepted the written statement, as the earlier adjournments for filing written statement, were supported by Doctor's certificate. He would then urge that the suit is at preliminary stage and the trial is yet to commence and as such, no prejudice will be caused to the respondent.

3. While opposing the application, learned Counsel for the respondent would urge that the suit is for recovery and the petitioner intentionally delayed the filing of the written statement, with a view to buy time. He would then urge that the petitioner was the instrumental in moving criminal complaints against the respondent with police station at Bombay, which *prima facie* depicts his ill intention. According to him, the petition lacks merit and is liable to be rejected.

4. From the record, it could be gathered that for adjournment sought for on 13th June, 2014, the application was supported by a Doctor's certificate, however, subsequent thereto, "no written statement" order was passed in the matter, even though the Doctor's certificate as regards ill

(3)

health of the petitioner was produced. Apart therefrom, it is also required to be taken note of the fact that the trial in the suit is yet to commence.

5. In the above background, in my opinion, it will be appropriate to grant an opportunity to the present petitioner to place on record his written statement by setting aside the impugned order. Thus, the following order :-

The order dated 7th November, 2014, passed by Civil Judge Senior Division, Shrirampur, below Exh.19, in Special Civil Suit No.27 of 2013, is set aside, subject to payment of costs of Rs.30,000/-, to be deposited in the Trial Court, within a period of two weeks from today. The deposit of costs shall be condition precedent and no further adjournment in the matter will be granted before the Trial Court, for the same. If the costs is not deposited within the stipulated period, the order impugned in the present petition shall hold the field.

On deposit of costs, the respondent will be at liberty to withdraw the same.

Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

amj