

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7081 OF 2014

**Jitendra Chandrakant Mehta : Petitioner
versus
Yogesh Gangaprasad Wagh and ors. : Respondents.**

**Mr. Charles J De Souza a/w Ms. Mahima Sinha and Ms. Neytra Nayak for
the Petitioner.**

**CORAM : R. M. SAVANT, J.
DATE : 23rd September 2015**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 3/4/2014 passed by the learned Joint Civil Judge Senior Division, Alibag by which order the Application (Exhibit 57) filed by the Defendant Nos.4 and 5 for setting aside the “No WS Order” as also for setting ex-parte order passed against the said Defendant Nos.4 and 5 came to be allowed and the Defendant Nos.4 and 5 were allowed to file their Writ Petition albeit on the payment of costs of Rs.2000/- each to the Plaintiff. The order discloses that there is no progress in the suit regarding recording of evidence for one year and therefore the Trial Court was of the view that no prejudice would be caused to the Plaintiff if the Application (Exhibit 57) is allowed. It is required to be noted that the Application (Exhibit 5) for temporary injunction was pending, which was partly argued. Though the application does not contain any elaborate reason as to why the Defendant Nos.4 and 5 did not file their written

statement inspite of the summons being served upon them. However, considering the fact that there was no progress in the suit in question for a period of one year, except that the application (Exhibit 5) for temporary injunction was being heard, in my view, the order passed by the Trial Court permitting the Defendant Nos.4 and 5 to file their written statement cannot be found fault with. It is always desirable that a party is given an opportunity to prosecute the proceeding on merits rather than being non-suited on a technical ground. For the inconvenience that has been caused to the Plaintiff, the Defendant Nos.4 and 5 have been directed to pay costs of Rs.2000/- each to the Plaintiff. The learned counsel for the Petitioner seeks to place reliance on the unreported Judgment in Writ Petition No.5092 of 2008 in the matter of Sudhirkumar Krishnalal Sahani v/s. Nagar Parishad/Nagar Palika/Municipal Council, Hinganghat and anr. The facts in the said case are distinguishable from the facts of the present case as in the present case there was no progress in the suit in question for a period of one year and therefore the Trial Court opined that no prejudice would be caused to the Plaintiff. Such was not the case in the *Sudhirkumar Krishnalal Sahani's* case (supra). Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Order.