

4. The summons for settlement of issues was served upon the Petitioner, who is the original Defendant No.1 in the suit, on 15/07/2013. The Petitioner appeared in the matter through her Advocate on 24/07/2013. Up to 23/01/2014, since no Written Statement was filed, the learned Civil Judge made an order on 23/01/2014, which is to be construed as the 'No WS' order.

5. The Petitioner, after the period of almost six months as on 23/06/2014, applied for recall of the 'No WS' order. In the application, the Petitioner stated that there was some compromise talks going on between the parties and it is for this reason that the Written Statement was not filed within prescribed period. The Respondent-Plaintiff filed reply denying that there were any compromise talks in the matter. The impugned orders record that there is no convincing reason to condone the delay of nearly 11 months in filing the Written Statement and consequently declining to recall 'No WS' order. Hence the present petition.

6. Having heard the learned Counsel for the parties and perused the record, it is no doubt true that the Petitioner ought to have been vigilant in the matter. However, the lack of vigilance on the part of the Petitioner is not of such nature as should deprive her of the opportunity of defence in the matter. The application for seeking the recall of the 'No WS' order was itself made after a period of almost six months from the date of the 'No WS' order. The application merely states that there were some compromise talks between the parties. No

particulars with regard to such talks have either been referred to or produced. The Roznama has also not been produced on record. The learned Counsel for the Respondent submitted that the application seeking recall of the 'No WS' order was made at the stage when the Respondent-Plaintiff filed Affidavit in lieu of examination-in-chief. Taking into consideration all such aspects, although an additional opportunity can be afforded to the Petitioner, the same shall be subject to payment of costs of Rs.25,000/- by the Petitioner to the Respondent-Plaintiff. This Court, in the case of *Mangala w/o Pradeep Lambade Vs. Madhubala d/o Madhukar Mishra*¹, has held that the requirement under Order 8 Rule 1 of filing the Written Statement within the period of 90 days is directory. In the said case as well, the Defendant was permitted to file Written Statement beyond prescribed period of 90 days, accepting the explanation that there were compromise talks going on between the parties and the Advocate who was engaged in the matter had returned the brief. Upon consideration of such circumstances, leave was granted to file Written Statement subject to payment of costs.

7. Accordingly, the impugned orders are set aside. The Written Statement filed by the Petitioner at Ex.18 is directed to be taken on record and considered as the defence of the Petitioner in the suit. All this shall be subject to the Petitioner paying the costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) in favour of the sole Respondent Shri M. V. R. Raju within a period of four weeks from today.

¹ 2009 (1) Mh.L.J. 322

8. Now that the Written Statement of the Petitioner is directed to be taken on record, the Respondent-Plaintiff shall be at liberty to withdraw the Affidavit in lieu of examination-in-chief already filed and thereafter file a fresh Affidavit in lieu of examination-in-chief, once the issue are recast in the matter.

9. Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs in this petition.

(M. S. SONAK, J.)