

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

WRIT PETITION NO. 10608 OF 2013

Dnyandev Bala Mahadik

...Petitioner

vs.

Narayanrao @ Himatrao Nanasaheb

Mane-Deshmukh

...Respondent

Mr. Surel S. Shah for the Petitioner.

Mr. B. A. Lawate for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 5th MARCH, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 1st April, 2013 passed by the learned 3rd Joint Civil Judge, Junior Division, Malshiras, by which order the application Exhibit 24 filed by the Petitioner – Original Defendant for setting aside the exparte order passed against him and for acceptance of his written statement came to be rejected. It is required to be noted that the Defendant had earlier filed an application for setting aside the exparte order and for acceptance of his written statement on 30th January, 2008 which came to be rejected by the Trial Court by order dated 25th October, 2010. However, it appears that the Defendant had presented his written statement on 1st February, 2008 which it seems was taken on record by the Trial Court. It appears that during the course of the hearing of the above suit, it transpired that though the written statement is on record, neither the exparte order was set aside nor the order accepting the

written statement has been passed, hence, the Defendant filed the instant application Exhibit 24 for taking the written statement which is already on record as filed on 1st February, 2008.

2] The Trial Court has rejected the application on the ground that since the earlier application for the same relief was rejected vide order dated 25th October, 2010, the instant application Exhibit 24 could not be entertained.

3] In my view, in the light of the fact that the written statement has already been filed on 1st February, 2008 and considering the fact that the said written statement was filed immediately after the period postulated by Order VIII Rule 1 of the Code of Civil Procedure was over. The Trial Court has taken a hyper technical view in rejecting the application Exhibit 24.

4] Having regard to the aforesaid fact, in my view, the impugned order is required to be quashed and set aside and it is accordingly quashed and set aside. Resultantly, the application Exhibit 24 would stand allowed. The written statement which is already filed on 1st February, 2008 would be read in the proceedings. The Defendant to pay costs of Rs.3000/- to the Plaintiff within four weeks from date. The Writ Petition is accordingly disposed of.

(R. M. SAVANT, J.)