

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

WRIT PETITION NO.11691 OF 2014

S. P. Enterprises

.. Petitioner

Versus

Dhondiram Vishram Jadhav and another

.. Respondents

Smt. Savita A. Prabhune, Advocate for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 16th JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the orders dated 27.06.2014 and 15.07.2014 passed by the Learned Civil Judge Junior Division, Baramati, by which orders the “no written statement” order passed against the Respondent/Defendant came to be set aside and in turn the Respondent/Defendant was permitted to file his written statement.

2. It seems that on an earlier occasion i.e. on 28.02.2014 when the suit was listed before the Trial Court for filing of W.S., an application Exh.20 came to be filed by the Defendant seeking adjournment and time to file written statement on the ground that his brother has expired. The said

application came to be rejected by the Trial Court by order dated 28.02.2014 on the ground that the reason mentioned is not sufficient. Thereafter the second application came to be filed for setting aside the “no W.S. Order” and for taking the written statement on record. The same reason mentioned in the Application Exh.20 was mentioned in the said application Exh.22. The Trial Court having regard to the said reason deemed it appropriate to allow the application Exh.22 by its order dated 27.06.2014. It is required to be noted that the suit is of the year 2013 and the learned counsel for the Petitioner stated that after passing of the “no written statement” order, the application preferred for taking the written statement on record was filed after five months after the service of summons. Even having regard to the said length of time the Trial Court is required to consider the application having regard to the fact that it is well settled that a party should be given an opportunity to prosecute the proceedings on merits rather than being thrown out on technicalities. Hence, no interference is warranted with the impugned order. The writ petition is accordingly dismissed.

[R.M. SAVANT, J]