

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

WRIT PETITION NO.185 OF 2015

Altaf Husain Vasaikar : Petitioner
versus
Irfan Aziz Petiwala and ors. : Respondents.

**Mr. Induprakash Tripathi with Ms. Bhagyashri Gawas i/by Lalji Tripathi for
the Petitioner.**
Mr. Priyank Shah i/by S K Srivastav & Co. for the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 12th January 2015

P.C.

1 The order dated 21/11/2014 passed by the learned Judge of the City Civil Court Greater Bombay by which order the right of the Petitioner i.e. the original Defendant No.1 to file his written statement was forfeited on account of non-payment of costs within the time stipulated by the earlier order is taken exception to by way of the above Petition.

2 It is required to be noted that by an order dated 8/10/2014 the Notice of Motion No.1534 of 2014 filed for taking the written statement on record by condoning the delay was allowed subject to costs of Rs.5000/-, payable to the Plaintiff. It was further observed that after the deposit of the costs that the written statement filed by the Defendant No.1 be taken on record. It is the case of the Defendant No.1 that after the order came to be passed, the direction in so far as payment of costs could not be complied with

as the Defendant No.1 was not available as he had gone on pilgrimage to Hajj. The suit thereafter came up on 21/11/2014 when the reason put forth by the Defendant No.1 for non-payment of costs was not accepted by the Trial Court and the right to file the written statement was accordingly forfeited. As indicated above it is the said order dated 21/11/2014 which is taken exception to by way of the above Petition.

3 The learned counsel appearing for the Respondent No.1 herein i.e. the original Plaintiff though opposes the Petition but ultimately leaves it to the Court.

4 Having regard to the fact that the Trial Court had deemed it appropriate to permit the Defendant No.1 to file his written statement albeit on the payment of costs, in my view, on the ground that the said costs have not been paid, it would not be proper to deprive the Defendant No.1 of his defence in the suit as the delay is not such so as to cause prejudice to the Plaintiff. In my view, the impugned order dated 21/11/2014 is required to be quashed and set aside and is accordingly quashed and set aside. The Petitioner/Defendant No.1 to deposit the further amount of Rs.500/- along with the original costs of Rs.5000/- in the City Civil Court, Greater Bombay on or before 20/01/2015. The written statement would be taken on record if the said costs are deposited as directed by the instant order. If the said costs are not deposited i.e. costs of

Rs.5500/-, the directions as contained in the impugned order of the right to file written statement being forfeited would then come into operation. With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]