

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

WRIT PETITION NO. 40 OF 2016

Shri Dattu Sonu Gadakh & Anr.	 Petitioners
Versus	
Sau. Vithabai Bhaskar Aher & Ors.	 Respondents

Mr. Sanjay Shinde for Petitioners.
None for Respondents.

***CORAM : N. M. Jamdar J.
Thursday 13 October 2016***

P.C.

. By an order dated 5 January 2016 notice for final disposal was issued to the respondents. Ad-interim relief was granted. The ad-interim relief is continued till date. The learned Counsel for petitioners states that in addition, the petitioner has served the respondents by way of private service and has filed affidavit of service. The learned Counsel for petitioners submits that he has also placed the pendency of the petition on record of the pending suit. In spite of this position, none appears for the respondents.

3. The respondent no.1 is the original plaintiff. By the impugned order, the application filed by the petitioner to set aside

'no written statement' and 'no cross order', has been rejected by the learned City Civil Court Judge by only narrating the events that transpired and not considering to what was a reason for not filing the written statement on time.

4. It was the case of the petitioners that due to their illness, the Court proceedings could not be attended and 'no cross' order was passed. In the petition, the petitioner has narrated the circumstances, in which the delay had occurred. It is stated that the petitioner no. 1 is 80 years old and petitioner no.2 is 66 years old. In view of their age, the contention that their health was not proper, cannot be stated to be fanciful ground. Furthermore, inspite of notices, the respondent/plaintiff has not appeared to contest the cause made out in the petition, and the statements on oath. Therefore, I am of the opinion that an opportunity needs to be given to the petitioner.

5. The impugned order dated 7 October 2015 below Exh. 38 is quashed and set-aside and the application filed below Exh. 38 in Regular Civil Suit No. 306/15 pending on the file of Civil Judge Junior Division, Sinnar, is allowed. The written statement to be filed within a period of four weeks from today.

(N. M. Jamdar, J.)