

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 401 OF 2015

Sadik Jabbar Sayyad

.. Petitioner

Versus

Najma Kalim Bagwan

.. Respondent

Shri S. D. Tawshikar, Advocate h/f Shri Shaikh Mazar A.
Jahagirdar, Advocate for the Petitioner.
The Respondent sole is served.

CORAM : S. V. GANGAPURWALA, J.

DATE : 13TH DECEMBER, 2017.

FINAL ORDER :

. The respondent though served is absent.

2. The petitioner has filed present writ petition against the no written statement order passed on 10.01.2013 and no cross examination order passed on 26.08.2013. Even application Exhibit 29 filed for recalling of the order and for filing written statement is rejected. This Court on 16.01.2015 had issued notice to the respondent and further directed the petitioner to deposit an amount of Rs. 10,000/- before the Trial Court on or before 31.01.2015. The learned advocate for the petitioner submits that, the petitioner has deposited the said amount within the stipulated period.

3. The suit filed by the respondent is substantive suit for specific performance of contract and perpetual injunction.

4. The petitioner has given reasons for not being in a position to file the written statement within the stipulated period and as written statement was not filed was further handicapped to cross examine the witness.

5. Considering the reasons given and the earlier order passed by this Court on 16.01.2015, I am inclined to exercise discretion in favour of the petitioner.

6. The impugned orders are quashed and set aside. The written statement filed by the petitioner be accepted. In view of the above, the respondent/plaintiff will have further right to lead additional evidence. The writ petition accordingly is allowed. No costs.

[S. V. GANGAPURWALA, J.]