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

**BENCH AT AURANGABAD**

**WRIT PETITION NO.2142/2017**

Vasant Hiranman Kamble & others.

...Petitioners..

**Versus**

Uttam Bhiku Rathod & another.

...Respondents...

.....

Shri Amit Mukhedkar, Advocate for petitioners.

Shri B.S. Chondhekar and T.V. Bedre, Advocates for respondent nos.1 & 2.

.....

**CORAM: M.S. SANKLECHA, J.**

**DATE: 11.04.2017**

**ORDER :**

1] Rule. Rule made returnable forthwith. Respondents waive service. At the request of learned counsel appearing for the parties, this petition is taken up for final hearing.

2] This petition under Article 227 of the Constitution of India challenges the order dated 4.1.2017 passed by the learned Civil Judge, Senior Division, Nanded. The impugned order rejected the petitioner's application to

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file written statement beyond the time allowed in the Order VIII Rule 1 of the Code of Civil Procedure, 1908. The impugned order has quoted the Order VIII Rule 1 of the Code of Civil Procedure to read as under:

**"1. Written Statement -** The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence.

(Provided that where the defendant fails to file the Written Statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.)"

3] The aforesaid provision of law applied by the learned Judge in disposing of the petitioners' application by the impugned order does not apply in the present facts. The aforesaid quoted provision is

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applicable to matters filed before the Commercial Courts and admittedly not to the present dispute. This is so, as the dispute is not commercial and the damages sought on account of defamation are less than rupees one crore.

4] The relevant provision of law, as applicable to the present facts as set out in Order VIII Rule 1 of the Code of Civil Procedure, 1908, is the regular provision and not the substituted provision made applicable to Commercial Courts. The unsubstituted provision does not in terms forfeit the right of a defendant to file a written statement nor does it fetter the discretion of the Court from taking a written statement on record beyond the period provided therein.

4] In view of the fact that the wrong provision of law has been referred to by the impugned order to reject the petitioner's application to take written statement on record beyond the period provided under Order VIII Rule 1 of the Code of Civil Procedure, the impugned order is set aside. The application is restored to the file of the learned Civil Judge, Senior Division, Nanded, for fresh disposal in accordance with law. It is made clear that this Court has not considered the merits of the

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petitioner's claim for allowing the written statement to be taken on record. Needless to say, the learned Judge will decide the application on its own merits.

5] Petition is allowed in the above terms. Rule is made absolute accordingly. No order as to costs.

**(M.S. SANKLECHA, J.)**