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

**WRIT PETITION NO.9450 OF 2017**

Syed Shah Azamuddin Nehri s/o PETITIONER  
Syed Mohd. Ibrahim Nehri  
Age - 67 years, Occ - Retired  
R/o Hyderabad, Through G.P.A.,  
Syed Bahuuddin Nehri s/o Syed Mazaruddin Nehri  
Age - 72 years, Occ - Pensioner  
R/o Ajabnagar, Chota Takiya  
Aurangabad, Taluka and District - Aurangabad

VERSUS

1. Shaikh Nazir s/o Shaikh Bashir RESPONDENTS  
Age - 65 years, Occ - Nil  
R/o Municipal No. 1-18-6,  
CTS No. 3114, Juna Bazar,  
Opposite Head Post Office,  
Aurangabad, Taluka and District - Aurangabad
2. Maharashtra State Wakf Board,  
Panchakki, Aurangabad  
Taluka and District - Aurangabad  
Thought its Chief Executive Officer

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Mr. Punit S. Mehta, Advocate for the petitioner  
Mr. M. M. Joshi, Advocate for respondent No. 1

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**[CORAM : SUNIL P. DESHMUKH, J.]**

**DATE : 31<sup>st</sup> JULY, 2017**

**ORAL JUDGMENT :**

1. Heard learned advocates for petitioner and respondent No.
- 1.

2. Order on Exhibit-31 in Rent Suit No. 7 of 2011 is being taken exception to by petitioner, who is landlord - plaintiff in aforesaid rent suit seeking eviction of defendant-tenant on various grounds.

3. During pendency of proceedings, it appears, application Exhibit-29 had been moved by landlord keeping in view Order 15A of the Civil Procedure Code, seeking direction to tenant to deposit suit claim and a further amount till disposal of suit. The application had been allowed directing defendant-tenant to deposit arrears of rent. It appears, no specific date for making deposit had been made.

4. It further appears that tenant had taken the matter in writ petition against order of making deposit and for a while, under interim orders of high court, operation of the order passed under Exhibit-29 had been stayed. After decision in said writ petition, it appears, an application had been moved by tenant letting him deposit amount as directed under order on Exhibit-29. Said application is yet pending.

5. While this is the position, an application appears to have been moved at Exhibit-31, purportedly with reference to Order

15A sub rule (2) of the Civil Procedure Code for striking down defence of tenant contending that the amount, as directed under order on Exhibit-29 has not been deposited exposing the tenant to action pursuant to aforesaid sub rule (2) of Order 15A.

6. Trial court has rejected the request observing that striking off pleading has serious adverse consequence on the rights of parties and its exercise as such, has to be had with great care and caution. In the present case, it has been observed, order under Exhibit-29, had been the subject matter of writ petition before high court and interim relief thereunder had been operating and further an application has been moved as referred to above to let tenant pay amount as ordered. In the circumstances, court found it difficult to accede to the request being made under application Exhibit-31.

7. Learned advocate for the petitioner strenuously urges to consider that since deposit pursuant to order on Exhibit-29 has not been made making liable the tenant for inaction and in the process incurring striking down the defence. He submits that for non deposit of amount, necessary consequence is striking off defence, which the court has failed to appreciate having regard to scheme of rules under Order 15A of the Code of Civil

Procedure.

8. Learned advocate for respondent No. 1, at the outset, submits that the tenant is ready to pay the amount according to order of the court on Exhibit-29 and an application therefor has already been moved, however, before any order could be passed on the same, application Exhibit-31 has been moved and proceeded with. He submits that Order 15A, Rule 2 of the Civil Procedure Code employs word "*may*" and a discretion has been conferred on the court to strike off or not the defence. Having regard to circumstances, after hearing the parties concerned said exercise has been carried out by the court and in its discretion has found it difficult to accept contentions of petitioner and has passed order rejecting application Exhibit-31. On instructions from his client, he submits that respondent No. 1 would deposit the amount as ordered under order on Exhibit-29 within a period of four weeks from the date of receipt of writ of this order.

9. Having regard to that while order for deposit had been passed, same had been subject matter of writ petition and interim order had been passed in the same by high court, it could not be said that there has been delay in making deposit as per order. The intervening circumstances are indication of that

compliance of the order could not be met with under the prevailing circumstances and an application has already been moved seeking permission to pay. Tenant appears to be ready and willing to deposit the amount and even a statement has been made before this court that tenant would pay up the amount pursuant to order on Exhibit-29 within four weeks from the date of receipt of writ of this order in the trial court. As such, this is not a case wherein interlude would be caused under writ jurisdiction.

10. Writ petition, as such, is not entertained and stands dismissed. In view of aforesaid, proceedings of Rent Suit No. 7 of 2011 be proceeded with expeditiously.

**[SUNIL P. DESHMUKH, J.]**