

Sarnobat

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

WRIT PETITION NO. 3725 OF 2017

Deepak Sampatrao Gaikwad.	.. Petitioner
Vs.	
Shri Sanjay Kundalik Gaikwad.	.. Respondent

Mr. Umesh Mankapure, Advocate for the Petitioner.
Mr. Ashutosh Kulkarni a/w Mr. Sarthak Diwan Advocate for the Respondents.

CORAM : M. S. SANKLECHA, J.
DATE : 16th AUGUST, 2017.

P. C. :

1. Moved for urgent relief.
2. This petition under Article 227 of the Constitution of India seeks to challenge the order dated 3rd January, 2017 passed by the Joint Civil Judge, Sr. Division, Sangli. By the impugned order the petitioner's application for filing a written statement in a summary suit proceeding under Order 37 Rule 3(5) of the Code of civil Procedure was dismissed.
3. The respondent herein has filed the suit for Rs. 67,94,100/- under Order 37 Rule 2 of Code of Civil Procedure and summons alongwith the plaint was served upon the Petitioner on 15th November, 2016. The petitioner did not file his appearance within 10 days, as provided under Rule 3 (2) of Order 37 of Civil Procedure Code. It was only on 1st December, 2016 that the respondent appeared and filed his application

under Order 37 Rule 3(5) of Civil Procedure Code seeking permission to file written statement. The impugned order rejected the application on the ground that the petitioner appeared after 10 days of the service of the summons. Moreover, it also records that the application offers no explanation for non-appearance within 10 days as required in Summary Suit proceedings. The fact that the application made also does not make out any triable issue arising in the present case.

3. Mr. Manakpure learned counsel for the petitioner states that, there is only a delay of 6 or 7 days in filing his appearance. Therefore, a lenient view should be taken.

4. I find that in the present facts, there is no application also made under Order 37 Rule 7 of the Code of Civil Procedure seeking condonation of delay and applying for leave to defend the suit. The view taken in the impugned order dated 3rd July, 2017 is a possible view and no interference under Article 227 of the Constitution is warranted.

5. Accordingly petition is dismissed. No order as to costs.

[M. S. SANKLECHA, J.]