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

WRIT PETITION NO.11205 OF 2017

Sarjerao B Shirke and ors	...	Petitioners
V/s.		
Raosaheb J Shirke and ors	...	Respondents

Mr. Nikhil Wadikar i/by Nandu V. Pawar,for
the Petitioners
Mr. Tushar Khairnar i/by Vaibhav R.
Gaikwad, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 21st DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the petitioners and learned
counsel for respondents.

2] By this petition filed under Article 227 of the Constitution
of India, the petitioners are challenging the order dated 19.8.2017,
passed by the Jt. Civil Judge J.D. Koregaon, thereby rejecting the
petitioners' application to set aside the order of "No W.S.", passed
against them.

3] The perusal of the order passed by the trial court reveals
that the trial Court has rejected said application, mainly on the
ground that suit is of the year 2001 and secondly on the ground that

already sufficient opportunity was granted to the petitioners to file written statement.

4] However, the order of the trial Court reveals that though the suit is of the year 2001, the petitioners herein, being the legal heirs of deceased defendant No.1 (b) have appeared in the suit only on 11.11.2016. In their application, they have also given the reason as to why there was delay in filing written statement, namely, that they had to take search of five old sale deeds of the year 1954-55 which were necessary, as per the advise of their advocate.

5] Considering the fact that the petitioners' are the legal heirs of deceased defendant No.1 (b), who are brought on record subsequently in the year 2016 and for the reasons given by them for delay in filing the written Statement, in the considered opinion of this Court, the delay needs to be condoned and the order of "No W.S." as passed by the trial Court is required to be set aside, so that the controversy between the parties can be decided on merits, finally and effectively and for the technical reason of delay, the petitioners should not suffer.

6] However, in order to compensate the respondent No.1-plaintiff, said application for setting aside "No W.S." order is required to be allowed subject to reasonable costs of Rs.10,000/- to be payable within two weeks from the receipt of copy of this order by the trial

Court.

7] Accordingly Writ Petition is allowed.

8] The impugned order passed by the trial Court is set aside and the application filed by the petitioners for setting aside, “No W.S.” order is allowed subject to paying or depositing of costs of Rs.10,000/- by the petitioners to respondent No.1-plaintiff, within two weeks from the receipt of this order by the trial Court.

9] The parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]