

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

WRIT PETITION NO. 10939 OF 2013

Nirmala Gopal Gharat.	... Petitioner.
Versus	
Shri Ganpat Narayan Patil & ors.	... Respondents.

Mr. Yogendra Pendse, advocate for petitioner.

Mr. Sanskar Marathe, advocate for respondent No. 1.

Mr. Jayesh M. Joshi, advocate for respondent Nos. 3 and 4.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 20, 2017**

P.C.:

1 Heard the learned Counsel for the petitioner and learned Counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be the original defendant No. 4 in R.C.S. No. 731 of 2004 pending before the learned Civil Judge,

J.D. at Bhiwandi. It appears that the defendant No. 4 had not filed written statement within the stipulated time although a fair opportunity was given. Therefore, an application was filed and an order was passed of “no W.S.” It appears that the order of no W.S. was passed on 19/4/2012. Despite that till 7/1/2013 there was no application seeking the relief of setting aside the order of no W.S. and accepting the written statement. The suit had proceeded. Then on 7/1/2013 newly appointed advocate had filed an application below Exh. 38 seeking condonation of delay and to accept the written statement. The said application below Exh. 38 was rejected on 27/2/2013. The suit has proceeded. Issues are framed. The plaintiff has filed affidavit of evidence. The present Writ Petition is filed on 19/11/2013.

4 Learned Counsel for the Petitioner vehemently submits that the written statement could not be filed in the stipulated time or soon after the order of no W.S. was passed since there there was lack of communication between the advocate and the petitioner. That there was a change in the advocate and the petitioner cannot be punished

for the acts of the advocate appointed by him. It is in these circumstances, the learned Counsel for the petitioner prays that he should be given a fair opportunity to defend the suit and hence prays that the order dated 27/2/2013 be quashed and set aside.

5 Taking into consideration the submission that the advocate appointed by the petitioner had not prosecuted the case diligently, this Court is inclined to set aside the order dated 27/2/2013 passed below Exh. 38, subject to the condition that alongwith written statement, the petitioner shall deposit a cost of Rs. 5,000/-. The written statement should be filed alongwith the receipt of deposit of Rs. 5,000/- within 4 weeks from today. The learned Civil Judge, J.D., Bhiwandi shall accept the written statement and proceed with the suit accordingly only in the eventuality that the written statement is filed on or before 18/12/2017.

6 The plaintiff would be at liberty to file an application seeking withdrawal of the cost amount as the suit has been delayed on account of defendant No. 4.

7 The learned Civil Judge, J.D. shall consider the application of the plaintiff to amend the pleadings in view of the contention raised in the written statement and if necessary shall also frame issue accordingly and then proceed with the suit.

8 In any case, the learned Civil Judge, J.D., Bhiwandi is hereby directed to conclude the proceedings in the suit by 30/5/2018. The learned Civil Judge, J.D., Bhiwandi shall not grant unwarranted adjournments to either of the parties.

8 The order dated 27/2/2013 is hereby quashed and set aside. The learned Civil Judge, J.D., Bhiwandi shall follow the directions given hereinabove.

9 Rule is made absolute accordingly.

(SMT. SADHANA S. JADHAV,J)