

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

926 WRIT PETITION NO.2101 OF 2018

Gayabai Sahebrao Shinde and another. Petitioners

Versus

Atul Devidas Shinde and others. Respondents.

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Advocate for Petitioners : Mr. S.D. Jaybhar h/f D R. Jayabhar

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Coram : N.M. Jamdar, J.

Date : 7 December 2018.

ORAL ORDER :

By this petition, the petitioners/original defendants have challenged the order passed by the learned Civil Judge Senior Division, Ahmednagar, rejecting the application to set aside the No Written Statement order dated 14 November 2016.

2. The petitioners/defendants were served on 11 August 2016 and on 14 November 2016 'No WS' order came to be passed. The petitioners have stated that, the petitioners i.e. husband and wife are aged and one of them suffers from cancer. These averments have been made in the application so also there are assertions to that effect

is made in the petition. The learned counsel for the petitioners have reiterated the said contention. The contention regarding one of the petitioners is suffering from cancer is advanced across the bar.

3. On 21 February, 2018 notice was issued to the respondents/plaintiffs. In spite of service, respondents/plaintiffs have not filed their appearance. Respondents/plaintiffs, therefore, have not contested this petition neither has controverted any of the assertion.

4. Considering the age of the petitioners and that the order of 'No Written Statement' was passed immediately within three months of the summons being served on the petitioners and that the respondents- plaintiffs have not appeared to contest the petition, indulgence needs to be extended in favour of the petitioners as respondents/plaintiffs have not demonstrated any prejudice.

5. While issuing notice, this Court had directed the petitioners to deposit an amount of ₹ 2,000/- in the trial Court, which has been deposited. This amount which has been deposited be treated as costs.

6. Accordingly, writ petition is allowed. The order dated 17

July 2017 rejecting the application is quashed and set aside. The application below exh.27 in RCS No.372 of 2016 is allowed and the order of 'No Written Statement' dated 14 November 2016 is quashed and set aside.

7. The petitioners will file their Written Statement within a period of six weeks.

8. Respondents/plaintiffs will be entitled to withdraw the amount of ₹ 2,000/- (₹ Two Thousand) deposited by the petitioners/defendants in the trial court.

(N.M. Jamdar, J.)

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