

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 748 OF 2017

Nilesh Dattatraya Vaidya	.. <u>Petitioner</u>
Versus	
Rajendra Appa Patil and others	.. <u>Respondents</u>

Mr. Girish Nagori, Advocate for the Petitioner.
Mr. M. M. Bhokarikar, Advocate for Respondent
No. 1.

CORAM: S. V. GANGAPURWALA, J.

DATE: 16th August, 2018

PER COURT :

1. The present respondent no. 1 has filed the suit for specific performance of contract. The petitioner is the original defendant no. 2. No written statement order came to be passed against the defendant no. 2, aggrieved thereby the present writ petition.

2. Mr. Bhokarikar, the learned counsel for respondent no. 1 – original plaintiff submits that as per Order 8 Rule 1 of the Code of Civil Procedure, 1908 the written statement has to be filed within thirty days from the date of service

of the summons. Summons were served upon the defendants on 24.07.2016 and the application for accepting the written statement was filed on 18.11.2016, after a period of six months from the lapse of thirty days. The learned counsel submits that time could be extended to ninety days. Even then the delay has been caused. No proper explanation has been given by the defendants.

3. I have gone through the application for setting aside no written statement order. The suit is a substantive suit for specific performance of contract. Along with the application the petitioner had also filed the Written Statement. The petitioner in the application had submitted that they are unaware of the actual date when the summons were served. No written statement order was not passed against them.

4. It appears that the Court did not pass a specific order of no written statement or that the suit to proceed without written statement. The

written statement is filed on 18.11.2016. There is not much delay in filing the written statement. Considering the fact that the suit is a substantive suit for specific performance of the contract and for the reasons given in the application for setting aside no written statement order the impugned order to the extent of petitioner is quashed and set aside on condition that petitioner pays costs of Rs. 10,000/- (Ten Thousand only) to the original plaintiff on or before 10.09.2018. The costs may be paid directly to the original plaintiff or may be deposited in the Trial Court on or before the said date.

5. Writ Petition accordingly stands disposed of.

No costs.

[S. V. GANGAPURWALA, J.]

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