

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

**WRIT PETITION NO.6186 OF 2014
with
CAW/691/2017**

Ibrahim Haji Abdul Mullani ... Petitioner

Vs.

Smt.Khatunbi Abdul Mullani & Ors. ... Respondents

Mr.Rahul P. Walvekar for the petitionervb
Mr.Manoj A. Patil for Respondent Nos.2 to 5
Mr.Prashant D. Patil i/b P.B. Kulkarni for Resp. No.6

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 26, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.
3. This petition is directed against the order dated 10.3.2014 passed by the learned Joint Civil Judge Senior Division, Kolhapur below exhibit 13 in Special Civil Suit No.54 of 2013. In this matter, the petitioner, who is the defendant, appeared in the suit on 4.4.2013, however, did not file written statement and, therefore, the

trial Court on 1.7.2013 had passed “no written statement” order. The petitioner/defendant thereafter filed application for setting aside the order of 'no written statement'. However, the trial Court rejected the said application.

4. Learned Counsel for the petitioner has submitted that the petitioner did not file written statement because he was trying to secure documents from the pending litigation between the parties and also he was out of country for three months as he went for Haj pilgrimage. Thereafter, he was sick and, therefore, he could not file written statement within time.

5. Learned Counsel for the respondents while opposing the petition, supported the order passed by the learned Civil Judge, Senior Division and submitted that no sufficient reason is given by the petitioner in his application.

6. Perused the order and the record before the Court. Considered the submissions. The order of 'no written statement' was passed on 1.7.2013. Thereafter, the application for setting aside the 'no written statement' order was passed by the petitioner on 16.1.2014. The reasons given by the petitioner in his

application about his absence and his health condition are sufficient to condone the delay.

7. Hence, the impugned order rejecting the application for setting aside the 'no written statement' order is hereby quashed and set aside however, subject to payment of costs of Rs.10,000/- (Rupees Ten thousand only) to be paid to the respondent. Rule made absolute accordingly in terms of prayer clauses (a) and (b),

8. In view of the disposal of the Writ Petition, nothing remains in the Civil Application and the same stands disposed of accordingly.

(MRIDULA BHATKAR, J.)