

vks

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

WRIT PETITION NO. 1094 OF 2018

Injecto Plast Pvt. Ltd	...	Petitioner
V/s.		
Pratibha Vaibhav Bhandari		
and ors	...	Respondents

Mr. T. D. Deshmukh, for the Petitioner.
Mr. Santaram A. Tarale, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 23rd APRIL, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondents.
- 2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 27.9.2017, passed by Civil Judge Junior Division, Vadgaon, in R.C.S.No.1540 of 2010, below Application at Exh.52.
- 3] Application at Exh.52 was filed by the present petitioner company, which is the original defendant before the trial Court, for setting aside the order of "No W.S.", passed against it on 24.1.2014, and for treating its say to the injunction application filed at Exh.18 as "written Statement". The trial Court has rejected the said application.

Hence this writ petition.

4] The submission of learned counsel for the respondent-plaintiff is that the suit was filed on 7.7.2010. The petitioner appeared in the suit on 24.8.2010. The order of “No W.S.”, was passed on 24.11.2014. Thereafter affidavit in lieu of examination- in-chief was filed by the plaintiff on 25.4.2017 and now on 27.9.2017, this application for setting aside the order of “No W.S.”, is filed which is after about 7 years from the date of filing of the suit and hence the trial Court has rightly rejected the said application.

5] It is true that in the normal circumstances, this Court would not have interfered in the impugned order passed by the trial Court as there is already inordinate delay in filing such application and secondly it is filed after the trial has commenced. However, by this application the petitioner does not want to file any new written statement, but he is only seeking that his say filed at Exh.18 to the injunction application, be treated as written statement. Therefore, in order to ensure that the matter is decided on merits, effectively and completely and in the interest of substantive cause of justice, this writ petition is allowed.

6] The petitioner is permitted to file written statement. However, as it is filed after trial has commenced and after delay of 7 years from the date of filing of the suit, permission is granted subject

to costs of Rs.10,000/- to be paid/deposited in the trial Court, by the petitioner to respondent.

7] Ordered accordingly.

8] Writ Petition is allowed in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]