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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4022 OF 2018

Ankush S. Gupta	...Petitioner
V/s.	
Ashish S. Bansal & Ors.	...Respondents

Mr.Jaydeep Deo for the Petitioner.

Mr.Rakesh Saroj for the Respondent Nos.1 and 2.

CORAM : R.D. DHANUKA, J.
DATE : 29TH OCTOBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioner has impugned the order dated 19th January, 2018 passed by the learned 16th Joint Civil Judge, Senior Division, Pune below Exhibit 69 filed by the petitioner (original defendant no.4) inter-alia praying for setting aside the order of “No W.S.” below Exhibit – 1 on 17th January, 2012.

2. It was the case of the petitioner that he was under an impression that he has already filed a Pursis in the proceedings adopting the written statement filed by his mother, respondent no.3, who has expired. The matter is at the stage of cross-examination of the plaintiff. It is the grievance of the learned counsel for the plaintiff that instead of cross-examining the plaintiffs, the petitioner filed an

application for setting aside the order of “No cross” and has not been cross-examining his client.

3. Learned counsel for the original plaintiff does not dispute that the cause of action against the petitioner as well as his mother, who expired and had admittedly filed the written statement is a joint cause of action. In these circumstances, in my view, learned Trial Court could not have rejected the application filed by the petitioner for setting aside the order of no W.S. and ought to have given an opportunity to file a Pursis for adopting the written statement already filed by his mother – original respondent no.3.

4. I therefore, pass the following order :-

a). The impugned order dated 19th January, 2018 passed by the learned Trial Court below Exhibit – 69 is quashed and set aside. The Application (Exhibit – 69) filed by the petitioner is allowed. It is made clear that the petitioner shall not file any separate written statement but is allowed to file a Pursis for adopting the written statement filed by the original defendant no.3. The said Pursis shall be filed within three weeks from today.

b). If any additional issue is required to be framed by the learned Trial Court in view of the Pursis allowed to be filed by the

petitioner, the same shall be framed within two weeks from the date of the petitioner filing a Pursis before the learned Trial Court.

5. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)