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

WRIT PETITION NO.14185 OF 2017

Leeena Prashant Barge and
anr

... Petitioners

V/s.

Vaibhav Suresh Bhutkar
and ors

... Respondents

Mr. Deelip Bodake, for the Petitioners.
Mr. Ajit Kengale a/w Mr. Sohil Gulabani, for
the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioners and learned
counsel for the respondents.

2] By this petition filed under Article 227 of the Constitution
of India, the petitioners are challenging the order dated 14.08.2017,
passed by the Jt. Civil Judge Junior Division, Koregaon, below the
Application at Exh.48 in R.C.S.No.204 of 2016.

3] Application at Exh.48 was filed by the petitioners, who are
the original defendant Nos. 1 & 2 before the trial Court, for setting
aside the order of, "No W.S.", and for permission to file Written

Statement. The trial Court, has however, rejected the said application. Hence the instant Writ Petition.

4] The perusal of the application filed by the petitioners before the trial Court, clearly goes to show that as the dispute pertains to the earlier litigation which took place in the years 1963 and 1998 and the petitioners wanted to find out old record. Meanwhile the petitioner No.2 fell sick, as a result thereof, they could not file written statement in time. In support of his illness, the petitioners have filed medical certificate of petitioner No.2, to show that he was ill from 25.01.2017 to 30th March, 2017.

5] In view thereof, as sufficient reason is given for not filing of the written statement in time and as the provisions of Order 8 Rule 1 of Code of Civil Procedure are directory and not mandatory in nature, in the particular facts of the case, these provisions can be effectively interpreted so as to advance substantive cause of justice. In my considered opinion, therefore, the trial Court should have allowed the petitioners to file their written statement by setting aside the order of "No W.S.", especially when the matter pertains to immovable property and the substantive cause of justice requires that the parties should be given an opportunity to contest their case on merits.

6] At the same time, in order to compensate respondents

herein, such application for setting aside the order of “No W.S. order” is required to be allowed subject to costs of Rs.10,000/-.

7] In view thereof, writ petition is allowed.

8] The impugned order passed below exh.48 in R.C.S. No.204 of 2016, is hereby quashed and set aside. As a result, the order of “No W.S. is set aside, subject to petitioners' paying/depositing costs of Rs.10,000/- within two weeks from the date of receipt of this order by the trial Court.

9] On failure of the petitioners to deposit costs within the stipulated period, this order shall stand automatically vacated without further reference to this Court.

[DR.SHALINI PHANSALKAR-JOSHI, J.]