

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

WRIT PETITION NO.2680 OF 2019

Bapurao Krishnarao Jadhav	... Petitioner
Vs.	
Abaso Krishnarao Jadhav	... Respondent
.....	
Mr. Dilip Bodake for the Petitioner.	
.....	

CORAM : M. S. KARNIK, J.

DATE : 19th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. None for the respondent though respondent is duly served. The petitioner is the original defendant. The plaintiff filed a suit for possession and removal of encroachment. Though the summons were duly served on the defendant, the written statement was not filed. The suit was proceeded ex-parte against the defendant. Thereafter by filing application Exhibit 25 the defendant requested that the no written statement order be set aside. The Trial Court rejected the application Exhibit 25 observing that there has been no due diligence on part of the defendant. According to learned counsel for the petitioner the

compromise talks were going on between the parties. He would moreover submit that no prejudice would be caused to the plaintiff if the written statement is taken on record.

3. This Court by the order dated 2.5.2019 directed the petitioner to deposit an amount of Rs.25,000/- before the Trial Court by way of security of cost. Learned counsel for the petitioner says that the said amount has been deposited in the Trial Court.

4. In this view of the matter and in the interest of justice in my opinion the defendant should not be deprived of an opportunity to defend the suit for want of written statement. Though there is delay of more than two years in making the application for taking the written statement on record, the application Exhibit 25 can be allowed by awarding suitable cost to the plaintiff to compensate for the delay caused.

5. The petition is allowed. Impugned order is set aside. Application Exhibit 25 is allowed. The written statement be filed within a period of three weeks from today. The suit is of the year

2012. It is made clear and even the petitioner undertakes that he would co-operate with the Trial Court in the expeditious disposal of the suit and will not seek unnecessary adjournments. The plaintiff is permitted to withdraw the cost of Rs.25,000/- which is deposited in the Trial Court.

(M. S. KARNIK, J.)