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

WRIT PETITION NO. 8226 OF 2019

Gopal D. Shetty & anr. ..Petitioners
vs.
Municipal Corporation for Greater Bombay
& ors. ..Respondents

....
Shri G.T. Kanchanpurkar for petitioners.
Shri Santosh Parad for respondent Nos. 1 to 3.

....
CORAM : M.S.KARNIK, J.

DATE : 3rd SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioners.

2. The petitioners – original plaintiffs by this Petition challenge an order dated 19/7/2019 passed by the City Civil Court, Mumbai, for taking on record the written statement filed by respondent Nos. 1 to 3 – original defendants Nos. 1 to 3.

3. Learned counsel for the petitioners invited my attention to page 36 of the paper-book which is the order passed

by the trial Court. The matter was called out on 5th July, 2019. when the trial Court adjourned the proceeding to 19/7/2019 at 2.45 p.m. for passing no written statement order against defendants.

4. By the impugned order the trial Court records that none remained present on behalf of the plaintiffs. The written statement of defendant Nos. 1 to 3 is accepted and taken on record.

5. Learned counsel for the petitioners pointed out that the matter was specifically kept on 2.45 p.m. on 19/7/2019. However, the matter was called out before 2 p.m. on 19/7/2019 and therefore the plaintiffs could not remain present. It is further pointed out that there is a delay of 3 ½ years in filing written statement and without filing any application stating sufficient cause for not filing the written statement, the same has been accepted.

6. Learned counsel for respondent Nos. 1 to 3 submitted that what has been done by the trial Court is only to take written statement on record and thereby granted the respondents to contest the suit on merits.

7. From the record it transpires that the matter was listed on 19/7/2019 at 2.45 p.m. It is therefore that the plaintiffs could not remain present when the impugned order was passed and as the matter was taken up before 2 p.m. Moreover, there is nothing on record to indicate that the Court has accepted the cause shown by defendant Nos. 1 to 3 for filing written statement after delay of more than 3 years.

8. In this view of the matter, the impugned order is set aside.

9. The trial Court to reconsider the application for taking the written statement on record.

10. I am informed that the matter is now before the trial Court on 9/9/2019. The parties to appear before the trial Court on 9/9/2019. The trial Court to pass appropriate order on the application for taking the written statement on behalf of respondent Nos. 1 to 3 after hearing the plaintiffs.

11. All the contentions are kept open.

12. The Petition is allowed with no order as to costs.

(M.S.KARNIK, J.)