

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13984 OF 2018

Babaji Barkya Kaple ... Petitioner
Vs.
Shashikant Sitaram Kaple and Ors. ... Respondents

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Mr. Amit S. Kapse for the Petitioner.

CORAM : M. S. KARNIK, J.

DATE : 26th SEPTEMBER, 2019.

P. C.:

1. Not on board. Taken on board.
2. By this petition an order dated 9.3.2018 passed by the Trial Court below Exhibit 53 is under challenge. By the impugned order the Trial Court has allowed the present respondent No.1-defendant to file his written statement by setting aside 'no written statement' order. The suit is for declaration and injunction. The 'no written statement' order was passed on 3.7.2015. Thereafter the plaintiff led his evidence. The defendant did not lead any evidence and therefore the Trial Court closed the evidence of the defendant by order dated 22.9.2017. Thereafter, application

Exhibit 53 was filed on 8.12.2017 for setting aside 'no written statement' order. The only reason given by the defendant in the application Exhibit 53 is that due to the death of his father there is delay caused in collecting required public documents with reference to the present matter and therefore he could not file his written statement within prescribed time limit. Even the Trial Court has granted ample opportunities to the defendant despite which he failed to make necessary compliance. The Trial Court purely with a view to give an opportunity to the defendant in the interest of justice to put his defence allowed written statement to be taken on record. While doing so the Trial Court imposed the cost of Rs. 3,000/-. Having gone through the reasons recorded by the Trial Court, I do not find this is a fit case to be interfere with the discretion exercised by the Trial Court as the defendant should not be deprived of an opportunity to defend the suit for want of written statement.

3. The petition is rejected.

4. However, it is made clear that defendant will co-operate with the Trial Court in expeditious disposal of the suit and will not seek unnecessary adjournments. The Trial Court is

requested to hear and decide the suit expeditiously and preferably within a period of nine months from today.

(M. S. KARNIK, J.)