

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10673 OF 2019**

M/s. Haware Engineers & Builders Pvt. Ltd. ...Petitioner
Versus
Rukmini Maruti Ture & Ors. ...Respondents

Mr. Prasad Dani a/w Mr. Nishant Tripathi, Mr. Somnath Iyer i/b M. Tripathi
& Co. for the Petitioner

Mr. Tushar L. Pimple for the Respondent Nos. 1 to 4

CORAM : REVATI MOHITE DERE, J.
MONDAY, 10th FEBRUARY 2020

P.C. :

1 Heard learned senior counsel for the petitioner and the learned
counsel for the respondent Nos. 1 to 4.

2 By this petition, the petitioner has impugned the order of `No
Written Statement (W.S.)' dated 13th July 2018 passed by the learned Joint
Civil Judge (Senior Division), Thane in Regular Civil Suit No. 59 of 2013.

3 Learned senior counsel for the petitioner submitted that the
petitioner was pursuing his 9A application and hence, the written statement
could not be filed in time. He submits that ultimately, the learned Judge

passed an order of `No W.S' on 13<sup>th</sup> July 2018, pursuant to which, the petitioner immediately filed an application on the next date i.e. on 14<sup>th</sup> July 2018 and prayed for setting-aside the order of `No W.S.' and for condonation of delay in filing the written statement.

4 Learned counsel for the respondents opposes the petition.

5 Perused the papers. The respondents Nos. 1 to 5/original plaintiff Nos. 1 to 5 have filed Regular Civil Suit No. 59/2013 as against the petitioner/original defendant No.2 and others. Admittedly, summons have not been served on some of the defendants in the suit. It appears that when the petitioner appeared in the said suit, he filed an application under Section 9A of Civil Procedure Code which was ultimately rejected by the trial Court vide order dated 5th December 2018. On 13th July 2018, the trial Court passed an order of `No W.S.' as against the petitioner and hence, the petitioner filed an application Exhibit 36 in the aforesaid suit for setting aside the order of `No W.S' and for condonation of delay, if any, in filing the written statement. The said application Exhibit 36 was rejected by the trial Court vide order dated 5th December 2018. Admittedly, for the first time, the order of `No W.S.' was passed on 13th July 2018, pursuant to which, the petitioner immediately filed an application for setting side the

order of `No W.S' on the very next day i.e. on 14<sup>th</sup> July 2018. Admittedly, prior thereto, no order of `No W.S' was passed.

6 Hence, in view of the aforesaid, the petition is allowed and the impugned order dated 5th December 2018 passed by the 5th Joint Civil Judge (Senior Division), Thane below Exhibit 36 in R.C.S. No. 59/2013 is quashed and set-aside, subject to the petitioner paying cost of Rs. 2,50,000/- within two weeks to the respondents. The petitioner also to file his written statement within two weeks.

7 Petition is disposed of on the aforesaid terms.

8 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.