

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

CIVIL WRIT PETITION NO. 10392 OF 2019

Ansar Ahmad Gulam Nabi Ahmad .. Petitioner.
Vs.
Mukund Rama Vadavale & Ors. ..Respondents

Mr. Kishore Patil a/w Mr. Amol P. Mhatre, Advocate for the
Petitioner.
Mr. Vijay V. Nene i/b Mr. Aniruddha Barge, Advocate for
Respondents.

**CORAM : C.V. BHADANG, J.
DATE : 9TH DECEMBER, 2020**

JUDGMENT

1. Rule made returnable forthwith. The learned counsel for the respondents waives service. Heard finally by consent of parties.
2. The challenge in this petition is to the order dated 29th September 2018 (below Exh. 52) passed by the learned Civil Judge, Jr. Division at Murbad in Regular Civil Suit no. 63 of 2011. By the impugned order, the learned trial court has rejected the application (Exh. 52) filed by the petitioner (defendant no.2) for setting aside

the order by which the suit was directed to proceed without the written statement of the petitioner.

3. The learned counsel for the petitioner has pointed out that a similar order passed against the co-defendant has been set aside by this court by order dated 26th June, 2018, in Writ Petition No.761 of 2015, subject to payment of costs of Rs.25,000/-. It is submitted that the petitioner is ready and willing to pay reasonable costs as may be directed. It is submitted that in the event suit proceeds without written statement of the petitioner, he would suffer severe prejudice.

4. The learned counsel for the respondents has submitted that no case for permitting the petitioner to file a written statement is made out.

5. I have considered the circumstances and the submissions made. Considering the fact that in respect of the co-defendants a similar order was set aside, subject to payment of costs and in the interest of justice, I find that a similar order can be passed in the present petition also.

6. In the result, petition is allowed. The impugned order dated 29th September 2018 is hereby set aside, subject to petitioner paying/depositing costs of Rs.30,000/- (Rupees Thirty Thousand Only) payable to the respondents/plaintiffs, within a period of four weeks from today.

7. The written statement of the petitioner shall be taken on record, subject to payment of costs.

8. Rule is made absolute in the aforesaid terms.

C.V. BHADANG, J.