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

WRIT PETITION NO.10862 OF 2019

M/s. Teksons Private Limited
Through its authorized signatory – K. S. Ramchandra ... Petitioner
Versus
M/s. Harmony Alloys ...Respondent

Mr. A. J. Kandarkar, i/b Mr. G. T. Kanchanpurkar, for the Petitioner.

Mr. R. J. Chaubey, i/b Mr. Suresh Jain, for the Respondent.

CORAM : REVATI MOHITE DERE, J.

DATE : 21st FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 21st September, 2019, passed by the learned Assistant Session Judge (Court 32), City Civil Court, Mumbai, by which, the learned Judge directed that the suit to proceed without written statement of the petitioner (original defendant).
3. Perused the papers. The Respondent is the original plaintiff who has filed a Suit for recovery of an amount of Rs.44,41,212/- along with future interest on Rs.26,15,712/- at the rate of 24% per annum. In the

said suit, the petitioner (original defendant) appeared, pursuant to the summons. It appears that pursuant to the summons received on 25th December, 2018, the petitioner appeared before the trial Court on 2nd March, 2019 and his advocate filed his vakalatnama on the said date on behalf of the petitioner. As the petitioner could not file his written statement within the statutory period, the petitioner filed Notice of Motion seeking condonation of delay of 7 days caused in filing the written statement. The said delay was condoned by the trial Court, subject to the petitioner paying costs of Rs.1,000/-, to the respondent – plaintiff. It appears that due to some difficulty and mis-communication between the parties i.e. the petitioner and his advocate, the said amount of Rs.1,000/- could not be paid by the petitioner to the respondent – plaintiff. Pursuant thereto, the petitioner requested the trial Court and sought permission to file written statement on 23rd September, 2019, as the advocate on record was not available on 21st September, 2019. The trial Court refused the request and proceeded to pass an order of ‘no written statement’ as against the petitioner and the matter was posted for recording the evidence of respondent – plaintiff.

4. Having heard the learned counsel for the parties and having considered the circumstances under which the written statement could not

be filed in time and the circumstances under which the order of ‘no written statement’ was passed, the impugned order dated 21st September, 2019, passed by the learned Assistant Session Judge (Court 32), City Civil Court, Mumbai, is quashed and set aside, subject to the petitioner paying a sum of Rs.5,000/- to the respondent – plaintiff, within two weeks from today. It is made clear that the said amount of Rs.5,000/- to be paid as costs to the respondent – plaintiff is in addition to Rs.1,000/- already imposed by the trial Court. Learned Counsel for the Petitioner states that the petitioner will pay a total amount of Rs.6,000/- to the respondent – plaintiff, directly within two weeks from today. Statement accepted. On payment of the costs of Rs.6,000/-, the petitioner is permitted to file his written statement in the trial Court, within the said two weeks.

5. Petition is allowed in the aforesaid terms and is accordingly disposed of.

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

REVATI MOHITE DERE, J.