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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6420 OF 2019**

Mr. Sanjay Vasant Piwal

....Petitioner

V/s.

Mr. Ramchandra Sonba Karade
and another

.....Respondents

Mr. Amod Ekhaspur for the Petitioner
None for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 9, 2021.

P.C.:

1] Though served, none appears for Respondent-Petitioner.

2] Petition is by Defendant questioning the order passed by the Trial Court below Exh. 17, an Application for setting aside the order that the Suit be proceeded without W.S. On 02/04/2018, Suit was ordered to be proceeded without W.S.

3] This Court while issuing the notice on 09/07/2019 has stayed

further proceedings in the Suit.

4] Petitioner has filed affidavit of service, however, it appears that none appears for Respondent-Plaintiff though served.

5] What can be noticed is, suit summons are received on 23/03/2018 and the Petitioner has filed his appearance on 27/03/2018 which was within statutory period prescribed under the Code of Civil Procedure, 1908.

6] In the aforesaid background and having regard to the fact that default in filing the written statement is attributed in the Application for setting aside the order of No W.S. to the lawyer appearing before the Trial Court, in my opinion, order impugned is liable to be quashed and set aside.

7] The Apex Court in the matter of *Rafiq and another Vs. Munshilal and another* [A.I.R 1981 Supreme Court 1400] has

observed that default of the lawyer shall not cause prejudice to the litigant. In that view of the matter, Exh. 17 so also order dated 02/04/2018 directing Suit to be proceeded without W.S. are hereby quashed and set aside.

8] Petitioner is permitted to place on record written statement within period of 6 weeks from today subject to payment of cost of Rs. 3000/- before the Trial Court to which Plaintiff will be entitled to withdraw.

9] Petition is allowed in the above terms.

[NITIN W. SAMBRE, J.]