

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO.13548 OF 2021

**PATEL SEEDS PRIVATE LIMITED THROUGH ITS  
DIRECTOR DARSHAN ANILKUMAR PATEL  
VERSUS  
KALPESH PRAVINCHADRA VED**

...

Mr S. B. Yawalkar, Advocate for petitioner

**CORAM : SMT. BHARATI DANGRE, J.**

**DATE : 1st February, 2022**

**PER COURT:**

1. Heard the learned Counsel for the petitioner and for the reasons justifying allowing of the writ petition, no notice to the respondent is necessary.

2. The respondent is owner of the premises, which is a go-down, which came to be rented to the present petitioner. The respondent, in the year 2014, filed Regular Civil Suit No.428/2014 for eviction and payment of rent against the petitioner and other defendants. The present petitioner is defendant No.5 in the said proceedings and time being sought to file written statement, the Trial Court, on 09/02/2015, rejected the request which constrained the petitioner to approach this Court by

(2)

filing the writ petition. This Court, on 21/02/2020 allowed the petition and directed acceptance of the written statement of the petitioner, if filed within a period of two week. Defendant No.4 filed his written statement on 20/03/2020, but the present petitioner failed to do so, instead, he moved an application on 08/03/2021, seeking time to file written statement on the ground that the Director of the petitioner is residing at Mumbai and is suffering from cough and fever. This application came to be rejected on 08/03/2021, which constrained the petitioner to file an application for setting aside 'No WS' order and seeking permission to file written statement.

3. I have perused the impugned order passed by the learned Civil Judge Junior Division, Jalgaon, on 12/08/2021 and find the said order is based on justifiable reason, since the learned Judge has come to a conclusion that defendant No.5 is avoiding to file written statement and the ground cited, does not justify any indulgence to set aside the 'No WS' order. Reference is also made to the order passed by the High Court and it is recorded that the High Court has shown indulgence to the petitioner, despite, the defendant No.5 is callous and failed to avail the benefit of the order passed by the High Court on 21/02/2020.

4. I find the impugned order perfectly within four corners of law. However, it being the settled position of law that no party shall be prejudiced, on being denied an opportunity, I deem it expedient to show indulgence on one more occasion in favour of the petitioner, but now this shall now be permitted, subject to costs of Rs.25,000/- being paid by the petitioner to respondent No.1.

The costs as directed, shall be directly paid to respondent No.1 and receipt obtained from respondent No.1 shall be tendered before the learned Joint Civil Judge Junior Division, Jalgaon.

The learned Joint Civil Judge Junior Division, Jalgaon is directed to accept the written statement, which is already tendered on record, by setting aside 'No WS' order. The written Statement shall be taken on record only on payment of costs to respondent No.1.

Writ Petition is allowed with the aforesaid directions.

**(SMT. BHARATI DANGRE, J.)**