

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4330 OF 2013**

LAYAK ABBAS PAHADWALE

..PETITIONER

VERSUS

SANJAY CHANDRAKANT PATTEWAR

..RESPONDENT

Mr. S. P. Tiwari h/f Mr. Shantilal J. Gayke,
Advocate for the Petitioner.

Mr. K. P. Rodge h/f Mr. Satish S. Deshmukh,
Advocate for sole Respondent.

CORAM : S. V. GANGAPURWALA, J.
DATED : 14th JANUARY, 2022.

PER COURT:-

1. The present petition is filed against the order refusing to set aside the no written statement order.

2. The petitioner is original defendant. After the Suit filed by plaintiff for recovery of amount was decreed, the present petitioner preferred an Appeal bearing Regular Civil Appeal No.120/2008. The said Appeal was partly allowed. The matter was remanded to the Trial Court with directions to defendant to file written statement on or before 04.01.2012 and deposit cost of Rs.2000/-. The present defendant in the Suit did not file written statement on or before 04.01.2012 and it appears that, the same was filed on 12.01.2012. The Trial Court rejected the application on the ground that, he did not possess the jurisdiction, as the Appellate Court had

directed the defendant to file written statement on or before 04.01.2012.

3. This Court on 22.07.2013 directed the defendant to deposit further Rs.5000/- to show his bonafide.

4. Mr. Tiwari, learned counsel for the petitioner submits that, pursuant to the order of this Court, the petitioner deposited Rs.5000/- and also Rs.2000/- as directed by the District Court. The petitioner has deposited total Rs.7000/- in this Court.

5. Mr. Rodge, learned counsel holding for Mr. Deshmukh, learned counsel for respondent submits that, the Trial Court did not commit any error while passing the impugned order. The recalcitrant attitude of the defendant is only to prolong the matter, as Suit is filed for recovery of the amount against defendant.

6. The Suit of the present respondent/original plaintiff is pending since the year 2004. This Court on the first date had considered the matter and directed the defendant to deposit additional Rs.5000/-, total Rs.7000/-. The defendant appears to have complied that order as contended by learned counsel for defendant. It is also further submitted that, written statement is also placed on record.

7. In view of that, impugned order is quashed and set aside on condition that present defendant shall deposit additional amount of Rs.5000/- in the Trial Court where the Suit is pending within a period of four weeks from today. The plaintiff/present respondent is entitled to withdraw the amount of Rs.7000/- deposited by the present petitioner in this Court and also additional Rs.5000/- directed to be deposited in the Trial Court. The deposit of Rs.5000/- within a period of four weeks from today is a condition precedent.

8. In case, petitioner deposits the amount as directed above, the Suit shall proceed further and the application Exhibit-36 for setting aside no written statement order shall stand allowed. If the amount of cost as directed above is not deposited, then the application Exhibit-36 shall stand rejected.

9. If the cost is deposited, then the Suit shall proceed and the Trial Court shall endeavour to decide the Suit on its own merits, expeditiously and preferably within a period of six (06) months.

10. Writ Petition is disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE

Devendra/January-2022