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

WRIT PETITION 6865 OF 2022

Javed Popat Mulani & anr. .Petitioners

Vs.

Saida Aadam Shaikh & ors. .Respondents

Mr. Tukaram Shendge i/b. Mr. Manoj Bagal, Advocate, for
the Petitioners

None for the Respondents

CORAM : ROHIT B. DEO, J.

DATE : 18.07.2022

P. C.

. The Petitioners are Defendants 2 & 3 in R. C. S.
145 of 2017 which is brought for possession and separate
possession.

2. Defendant 1 in the suit is Mahitabi Popat Mulani,
who is the mother of the Defendants 2 & 3.

3. It appears that Defendant 1 was proceeded
without Written Statement. She, however, appeared before
the Court and sought setting aside of the No Written

Statement Order and succeeded.

4. Defendants 2 & 3, however, did not file Written Statement with the result that like in the case of their mother, No Written Statement Order was passed on 04.10.2017.

5. Defendants 2 & 3 preferred an Application dated 28.01.2022 for setting aside the Order dated 04.10.2017. The cryptic Application states that Defendants 2 & 3 are residing in some other town, that Defendants 2 & 3 could not collect the necessary documents and since March, 2020 there was a lock down due to Covid-19 Pandemic.

6. The learned trial Court was pleased to reject the Application for permission to place on record the Written Statement by Order dated 28.01.2022 which is impugned herein.

7. I see no error in the order impugned.

8. While the provisions of O. VIII, Rule 1 of the Code of Civil Procedure, 1908 (for short 'CPC') are directory, a strong case will have to be made for permitting the Defendants 2 & 3 to file on record Written Statement after nearly five years of the expiry of the prescribed period. Suffice it to refer to the decision of the Apex Court in ***Atcom Technologies Ltd. Vs. Y. A. Chunawala and Co. reported in (2018) 6 SCC 639.***

9. There is absolutely no attempt made in the Application to make out any case, much less strong case for the inability to place on record the Written Statement. While the pandemic struck the nation in March, 2020, Defendants 2 & 3 have not explained why they could not have collected the documents and filed the Written Statement from 2017 till March, 2020, when their aged mother was in a position to do so.

10. The Petition is dismissed.

(ROHIT B. DEO, J.)