

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

WRIT PETITION NO.2339 OF 2020

Shri. Vitthal Laxman Dagade and Ors. ..Petitioners
Versus
Ramchandra @ Ramdas Laxman Dagade ..Respondent

Mr. Dheeraj Patil i/by Mr. R. S. Kale, for the Petitioners.
None for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 7th JANUARY, 2022

PC.

1. Though served none appears for the non-applicant/plaintiff.
2. This petition is by the defendants to Regular Civil Suit No.442 of 2016 wherein respondent/plaintiff has sought decree of declaration that the Release Deed dated 10th December, 2013 is not binding on him.
3. It appears that the suit proceeded without written statement. The petitioners then moved an application Exhs.36 and 38 for setting aside 'No WS' order which was rejected vide order dated 28th January, 2019 and confirmed vide order dated 27th September, 2019 passed on application for review. It is claimed that delay of one year caused in filing application for setting aside 'No

WS' order as at the relevant time written statement was not placed on record as settlement talks were going on.

4. During the course of hearing in the petition, though served none appears for the respondent/plaintiff and contention raised in the petition are not controverted.

5. As such, in the interest of justice and subject to payment of cost of Rs.15,000/- to be deposited before the Court below, 'No WS' order is hereby set aside.

6. Petitioners undertake to file written statement within a period of one week from today before the Court below alongwith payment of cost.

7. Statement is accepted as an undertaking to this Court.

8. In case if the cost is not deposited with written statement, the Court below shall proceed with the suit without accepting the written statement.

9. The petition stands allowed in the above terms as order impugned passed below Exhs.36 and 38 and also Exh.40 are hereby quashed and set aside.

[NITIN W. SAMBRE, J.]