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

CIVIL WRIT PETITION NO. 1662 OF 2020

ANIL GAJANAN WALAWALKARPETITIONERS
SINCE DECEASED THROUGH LR'S

V/s.

AMARESWAR B. CHAKRABORTY AND ORSRESPONDENTS

**WITH
CIVIL WRIT PETITION NO. 1708 OF 2020**

GOPAL GAJANAN WALAWALKARPETITIONERS
SINCE DECEASED THROUGH LR's

V/s.

AMARESWAR B. CHAKRABORTY AND ORSRESPONDENTS

Mr. Jayesh M. Joshi advocate for the Petitioners

CORAM : NITIN W. SAMBRE, J.

DATE: JANUARY 27, 2022.

P.C.:

- 1) Learned counsel for the Petitioner on instructions makes a categorical statement that service on Respondent no. 1 is already effected and as such, service on Respondent-Plaintiff is complete.
- 2) In both these petitions, Petitioners are Defendants who had

taken out Application Exh. 80 in Special Civil Suit No. 710/2012 preferred under the provisions of Specific Relief Act for setting aside 'No W.S.' order. Vide order impugned passed below Exh. 80 and 81, prayer of the Petitioners who are Defendant Nos. 2/1 to 2/3 and Defendant no. 1/4 came to be rejected as prayer was moved beyond the period prescribed pursuant to provisions of order VIII Rule 10 of the Code of Civil Procedure, 1908.

3) Admittedly, in the case in hand, written statement was not preferred within time stipulated. Rather, parties hereto have approached the Court below with prayer for setting no written statement order at belated stage particularly after delay about 247 and 353 days respectively.

4) It is claimed that since some of the LR's are residing outside the country, delay is caused in collecting documents such as Power of Attorney etc.

5) Contentions aforesaid are not controverted before this Court by the Respondent-Plaintiffs as they have chosen not to appear inspite of service.

6) At this stage, counsel for the Petitioner submits that written

statement filed by Defendant nos. 1 to 3 is already on record which the Petitioner intends to adopt and that being so, no prejudice will be caused to Respondent-Plaintiffs, if petition is allowed.

7) In the aforesaid background, it can be noticed that Petitioners intend to adopt written statement filed by Defendant nos. 1 to 3. Defence of Defendant nos. 1 to 3 was already disclosed to the Respondent-Plaintiffs within time and if Petitioners are permitted to adopt written statement of Defendant nos. 1 to 3, Respondent-Plaintiffs will not be put to prejudice as no new defence is set up by the Petitioners.

8) In the aforesaid background, in my opinion, delay caused in preferring written statement needs to be condoned, subject to payment of cost of Rs. 7,000/- each to be deposited before the Trial Court within period of two weeks, delay in filing written statement stands condoned.

9) As a consequences of above, 'No W.S.' order is set aside and Petitioners are permitted to file pursis adopting written statement of Defendant nos. 1 to 3.

10) Needless to clarify that in case if the cost is not deposited

within stipulated period as ordered hereinabove, the Trial Court would be at liberty to proceed ahead with Suit considering that order impugned passed below Exh. 80 & 81 are upheld by this Court.

11) Petitions stand allowed in the above terms.

[NITIN W. SAMBRE, J.]