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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 885 OF 2023

Omsai Real Estate
Through its Managing Director (Partner)
Mr. Sudhakar Prabhakar Gaikwad
Age – 45 years, Occ – Business
R/o Plot No.B-7, N-4, CIDCO, Near
MIT High School, Aurangabad

PETITIONER

VERSUS

Rahul Mohan Patel
Proprietor of Jay Jalaram Trading
Age – 32 years, Occ – Business
Shop at Near Gas Pump,
Chikalthana, Jalna Road,
Aurangabad

RESPONDENT

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Mr. Hrishikesh V. Tungar, Advocate for the petitioner
Mr. M. R. Sonawane, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 6th MARCH, 2023

ORDER :

1. By this petition, the petitioner impugns order dated 17th December, 2022 passed by the learned Civil Judge, Senior Division, Aurangabad below Exhibit-83 in Special Civil Suit No. 432 of 2021. The petitioner further seeks a direction that application Exhibit-83 be allowed.
2. The petitioner is the original defendant in Special Civil Suit

No. 432 of 2021 filed by the respondent – plaintiff for recovery of an amount of Rs.7,97,039.78. Pursuant to the summons, the petitioner appeared in the suit on 28th February, 2022. It is the case of the petitioner that thereafter, the matter was kept before Lok Adalat on 12th March, 2022. Roznama of that date shows that advocates of the parties were absent when called out before the Lok Adalat. Hence the next date fixed was on 29th April, 2022. According to the petitioner, on 29th April, 2022, when the “No W. S.” order was passed against him, he lost track of the matter. Thereafter on 17th December, 2022, he filed application Exhibit-83 praying that “No W.S.” order may be set aside.

3. It appears from the said application that the application for setting aside “No W.S.” order was filed without filing written statement. The Trial Court has rejected the application, observing that *“None present for the defendant when called. The defendant has even not tendered his W.S. along with this application. Hence, application is rejected”*.

4. Though no sufficient cause is assigned by the petitioner in the said application, in the interest of justice and with a view to give reasonable and fair opportunity to the petitioner – defendant, to defend the suit on merits, the Trial Court ought to have taken a pragmatic approach and ought to have allowed

application Exhibit-83, by imposing costs on the petitioner – defendant.

5. Learned advocate for the respondent vehemently opposed the petition contending that the petitioner may be directed to deposit the amount claimed in the suit and subject to that condition, the petition may be allowed, if at all this Court is inclined to allow the petition.

6. To this, the learned advocate for the petitioner submits that as per his instructions, the goods, value of which is claimed in the suit, were not even received by the defendant.

7. Be that as it may, for the aforesaid reasons, the petition deserves to be allowed. Hence, the following order.

ORDER

A] Writ Petition is allowed in terms of prayer clause "B".

B] The impugned order dated 17th December, 2022 passed by the Civil Judge, Senior Division, Aurangabad below Exhibit-83 in Special Civil Suit No. 432 of 2021 is hereby quashed and set aside.

C] Application Exhibit-83 in Special Civil Suit No. 432 of 2021 pending on the file of learned Civil Judge Senior Division,

Aurangabad is allowed, subject to the condition that the petitioner shall pay costs of Rs.25,000/- to the respondent – plaintiff, within four weeks from the date of receipt of writ of this order in the Trial Court.

D] Petitioner shall file his written statement within two weeks from the date of receipt of writ of this order. Hearing of the suit is expedited.

[NITIN B. SURYAWANSHI]
JUDGE