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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9837 OF 2021

Aurangabad Municipal Corporation, Aurangabad PETITIONER

VERSUS

Sk Mansur Sk Mustafa and Another RESPONDENTS

.....

Mr. Ameet R. Vaidya, Advocate for the petitioner

Mr. Mujtaba Gulam Mustafa, Advocate for respondents

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd MARCH, 2023

ORDER :

1. Application (Exhibit-35) filed by the petitioner – defendant in Regular Civil Suit No.82 of 2014, to file written statement after the stipulated time is over, is rejected by the Civil Judge, Senior Division, (Corporation Court) Aurangabad vide order dated 19th November, 2019. Hence, the present writ petition.

2. Respondents – plaintiffs filed the suit seeking a declaration that the premises of the plaintiffs, wherein they are running school, is exempted from paying municipal taxes. Perpetual injunction that the defendant should not recover municipal taxes from the plaintiffs in respect of the suit premises, till the trust is running the school there, is also sought.

3. Application Exhibit-5, filed by the plaintiff for interim injunction was rejected by the Trial Court on 24th April, 2015. Thereafter, due to failure on the part of the defendant, to file written statement within 90 days, "*No Written Statement*" order was passed against the defendant on 16th July, 2015.

4. The defendant then filed application Exhibit-35 for setting aside of the "*No Written Statement*" order stating that file of the learned advocate of the defendant was misplaced and, therefore, the written statement could not be filed within time. There is no intentional delay on the part of the defendant to file the written statement. The defendant being a public institution, if is not allowed to file written statement, irreparable loss would be caused to the defendant.

5. Plaintiffs opposed the application by relying on few citations. The Trial Court, by the impugned order, has rejected the application.

6. Heard learned advocate for the petitioner and the learned advocate for the respondents. Perused the grounds raised in the writ petition, documents annexed to it and the impugned order.

7. Considering the reason given by the defendant in the

application that file of their advocate was misplaced and, therefore, written statement could not be filed in time and delay is caused and the fact that the defendant is a public institution and keeping in view the principles of natural justice, reasonable and fair opportunity to defend must be given to the defendant. The Trial Court has adopted hyper technical approach while rejecting application Exhibit-35, which cannot be countenanced in the facts of the present case. The writ petition, in the circumstances, deserves to be allowed.

8. In the result, the writ petition is allowed in terms of prayer clause "B", subject to the petitioner paying cost of Rs.10,000/- to the plaintiffs, in the Trial Court, within a period of three weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE