

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

WRIT PETITION NO.10488 OF 2019

Tulsi M. Narayan Petitioner
Vs.

Williams and Company through
Partners Respondent

Mr. Priyal G. Sarda for the Petitioner.

Mr. Kaustaubh Patil a/w. Mr. Rohaan Pajmjar for Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 13 JULY 2023.

P. C.

1. Heard.

2. The challenge in the petition is to the order dated 29/3/2019 rejecting petitioner's application seeking to set aside no written statement order and for accepting cost of Rs.500/- which was directed to be paid *vide* order dated 7/8/2017.

3. Heard Mr. Priyal G. Sarda, learned counsel for the petitioner and Mr. Kaustaubh Patil for respondents.

4. The facts of the case would show that the defendant

has been grossly negligent in defending the proceedings which are of the year 2015 and in which affidavit of evidence has been filed in 20/2/2017. The relevant dates are that the suit is of the year 2015 and on 8/9/2016 the defendant appeared in the Suit. As there was no written statement filed, order came to be passed on 17/12/2016 to proceed without written statement of the petitioner. Thereafter on 27/2/2017, application was made for setting aside "no written statement" order which came to be allowed on 7/8/2017 subject to payment of cost of Rs.500/- This cost was not paid and as such order of setting aside "no written statement" was revived and on 26/2/2019 considering that there was no compliance of payment of cost again "no written statement" order was passed against the defendant. Thereafter once again on 13/3/2019 application for setting aside "no written statement order" and for permission to pay cost was filed, which came to be rejected by impugned order dated 29/3/2019.

5. In this case, in my opinion, no indulgence can be shown to the defendant, who after having filed appearance on 8/9/2016, failed to file written statement and did not comply with

the order of 2017 permitting him to pay cost and to file his written statement. No doubt it is true that the period mandated for filing of the written statement under the provisions of Order 8 Rule 1 of C.P.C. are directory and not mandatory. However, it cannot lost sight that the purpose is to ensure speedy trial of the proceedings. In the suit of 2015, even after affidavit of evidence was filed in 2017, the suit has not proceeded further. Failure of the defendant to file written statement within the period prescribed under Order 8 Rule 1 has not been explained in any manner. Perusal of the application dated 13/3/2019 seeking to set aside no written statement discloses that there is no explanation given as to why cost could not be paid. Pertinently the application is not accompanied with the draft written statement in order to show his bonafides. Considering that the trial is already commenced and affidavit of evidence is filed in the year 2017, in my opinion no indulgence is required to be shown to the defendant who was not diligent. Attempt has been made to lay blame on the advocate, however I am not inclined to consider the submission in absence of any such pleading and it is for the litigant who is stated to be Bishop, to be diligent and contact his advocate to ensure that his rights are well

protected.

6. In light of above, the writ petition is devoid of merits and stands dismissed.

SHARMILA U. DESHMUKH, J.