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

WRIT PETITION NO.5123 OF 2023

Ravi Anthony Raj Achari ... Petitioner

V/s.

Alulraj Nayanprakash Achari & Anr. ... Respondents

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Ms. Smita Mhatre i/by Mr. Laxman M. Jadhav for the
petitioner.

Mr. Rahul Singh with Mr. Yash Naik i/by Legal Catalyst
for the respondents.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 12, 2023

PC.:

1. The petitioner is defendant in Regular Civil Suit No.959 of 2018. The respondent filed suit seeking declaration, possession and injunction in relation to the suit property. The petitioner/defendant was served with suit summons on 23 November 2018. Within thirty days of service of summons, the Trial Court passed “no WS” order below Exhibit 11 against the petitioner. The petitioner on 29 January 2019, i.e. within thirty days of date of service of summons applied for setting aside “no WS” order. The Trial Court by the impugned order dated 11 January 2021 rejected the application on the ground that the defendant did not file application for extension of time to file written statement.

2. In my opinion, the approach adopted by the Trial Court is perverse. Order 8 Rule 1 of the Code of Civil Procedure, 1908 allows thirty days' time to file written statement. Within thirty days', the Trial Court has no power to pass such order of "no WS". It is only after completion of thirty days, the Trial Court, for the reasons recorded, can extend time for filing written statement within thirty days. There is no question of seeking time to file written statement. Therefore, the reasons mentioned in paragraph 5 of the order is contrary to the express provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908.

3. It appears that within thirty days the petitioner applied for recalling of no WS order. Considering the nature of reliefs sought against the petitioner, the Trial Court ought to have liberally allow the application, particularly when such application is filed within thirty days from the date of service of summons. Such hyper-technical view which is *ex facie* perverse gives rise to unnecessary litigation. Therefore, in my opinion, the impugned order dated 11 January 2021 cannot be sustained. Hence, following order:

4. Impugned order dated 11 January 2021 passed by the Joint Civil Judge Senior Division, Thane below Exhibit 11 in Regular Civil Suit No.959 of 2018 is quashed and set aside.

5. The written statement filed by the petitioner shall be taken on record.

6. In so far as order passed below Exhibit 12 is concerned, it appears that the defendant filed an application for setting aside "no say" order as regards application below Exhibit 5. The Trial

Court rejected the application on the ground that application below Exhibit 5 was already decided and, therefore, no fault can be found with the impugned order. However, it will be open for the petitioner to challenge order below Exhibit 5 *inter alia* on the ground that the petitioner was not granted sufficient opportunity to file reply.

7. With this clarification, the writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)