

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITIO N NO. 4063 OF 2024

Lata Vinay Shah

... **Petitioner**

Versus

Jasraj Vinay Shah & Ors.

... **Respondents**

Mr. Aashay S. Rabade *i/b Mr. Shreyash Yande, for the Petitioner.*

Mr. S. B. Rao *i/b Ms. Gauri S. Rao for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATE : 27 NOVEMBER 2024.

P.C. :

1) The Petition challenges Orders dated 21 March 2023 passed by the Small Causes Court directing that the suit shall proceed without written statement of the Defendant. The Petitioner has also challenged Order dated 3 October 2023 passed by the Small Causes Court on application at Exhibit 11 seeking setting aside 'No WS' Order dated 21 March 2023.

2) I have heard the learned counsel appearing for the parties and have considered the submissions canvassed by them.

3) It appears that the suit summons was served on the Defendant on 21 December 2022 and accordingly period of 90 days for filing of the written statement was to expire by 21 March 2023.

On 21 March 2023 itself the Trial Court proceeded to pass 'No WS' order. It appears that on the same day Defendant filed application under Order 4 Rule 1(3) of the Code of Civil Procedure seeking a declaration that the suit has not been duly instituted on account of lack of verification required under Order 4 Rule 1(3) of the Code. The said application filed by the Defendant at Exhibit 10 has been allowed by the Trial Court by Order dated 10 August 2023. This would essentially mean that as on 21 March 2023 when 'No WS' order was passed, the suit was not duly instituted. Defendant rightly filed application at Exhibit 11 seeking recall of 'No WS' order on the ground that issue of validity of the suit itself was pending in application at Exhibit 10. Instead of recalling the 'No WS' order, the Trial Court proceeded to reject the application at Exhibit 11 observing that the application was not supported either by an affidavit or by written statement. The Trial Court failed to appreciate that there was defect in the suit, which was cured only after passing of order dated 10 August 2023. In that view of the matter, the Trial Court ought to have recalled the 'No WS' order dated 21 March 2023 and ought to have granted opportunity to the Defendant to file the written statement.

4) The Petition accordingly succeeds. Orders dated 21 March 2023 as well as the Order dated 3 October 2023 passed by the Small Causes Court are set aside. Defendant would be at liberty to file written statement within a period of two weeks from today.

5) With the above direction Writ Petition is allowed and **disposed of.**

[SANDEEP V. MARNE, J.]