



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4562 OF 2024

Irshad Akhalakh Hussain Sayyad And Others

VERSUS

Durre Shahawar Begum Akhalakh Hussain Sayyad And Others

Mr. S. R. Kedar h/f Mr. D. H. Jadhavar, Advocate for Petitioners

Mr. S. B. Choudhari, Advocate for Respondent Nos. 2 to 4

CORAM : R. M. JOSHI, J.

DATE : 07th May, 2025

PER COURT :-

1. None appears for contesting respondents. Absence of contesting respondent i.e., plaintiff in Regular Civil Suit No. 162/2018 indicates that they are not interested in opposing the petition.
2. This petition takes exception to the order dated 09.10.2023 passed by Trial Court in rejecting application to set aside No Written Statement order (for short “no WS order”) passed on 12.04.2018.
3. Learned counsel for petitioners, on instructions, makes statement that along with Application Exhibit 34, written statement was produced before the Trial Court. It is his submission that by imposing a reasonable cost, the application deserves to be allowed.

4. It is in the interest of parties that the lis between them is decided on merit rather than its disposal on technicalities. Here, in this case, though there is delay caused in filing of the application for setting aside no WS order, delay has been explained in the application. Along with this application, written statement was sought to be placed on record. It was, therefore, in the interest of justice, Trial Court should have allowed the said application by imposing reasonable cost.

5. In view of the above, impugned order is set aside. Application Exhibit 34 stands allowed. Cost of Rs. 10,000/- payable by petitioner to the original plaintiff. Trial Court to take written statement on record after satisfying itself that the amount of cost has been paid by the petitioner herein to the plaintiff.

6. Petition is disposed of in above terms.

(R. M. JOSHI, J.)

bsj