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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 9743 OF 2023**

Shri Haribhau Yashwant Dange                      ...      Petitioners  
(since deceased through legal heirs)

Vs.

Shri Arun Maruti Dange & Another                      ...      Respondents

Mr. Avinash B. Avhad for the Petitioners.

Mr. J. D. Khairnar for Respondent Nos. 1 and 2.

**CORAM : GAURI GODSE, J.**

**DATE : 7<sup>th</sup> JULY 2025**

**ORDER :**

1. Not on board. Taken on the production board.
2. This petition is circulated as date is not assigned to the petition.
3. Pursuant to the earlier order, this petition is taken up for final disposal. This petition is filed by the plaintiffs to challenge the order dated 1<sup>st</sup> April 2023 passed below Exhibit 58 and 62 permitting the defendant nos. 1 and 2 to file written statement and additional written statement by setting aside 'No Written Statement' order passed on 21<sup>st</sup> April 2022 and 1<sup>st</sup> November 2022.

4. Defendant nos. 1 and 2 failed to file their written statement. Hence, 'No Written Statement' order was passed on 21<sup>st</sup> April 2022. Thereafter, the plaintiffs amended the suit. Since there was no written statement filed by the plaintiffs further order was passed on 1<sup>st</sup> November 2022 of 'No Written Statement' even to the amended plaint. After this order of 1<sup>st</sup> November 2022, defendant nos. 1 and 2 filed two separate applications at Exhibit-58 and 62 to recall the earlier two orders and permit defendant nos. 1 and 2 to file their written statement. These applications are allowed on payment of costs of Rs.1000/- to the plaintiffs.

5. Learned counsel for the petitioners ("plaintiffs") submits that in the application for setting aside 'No Written Statement' order there are no reasons given for the delay in filing written statement. He submits that the impugned order does not record any reason for condoning delay in filing application by defendants.

6. To support his submissions learned counsel for the petitioners relies upon the decision of this court in the case of *Parasmal Daulatram Jain vs. Rameshwar Rathanolal Karwa*<sup>1</sup> and *Atcom Technologies Limited vs. Y. A. Chunawala and*

<sup>1</sup> 2020 (1) Bom C.R. 435

*Company and Others*<sup>2</sup>. He submits that a consistent view is taken that if a gross delay in filing written statement is not satisfactorily accounted for, the defendants cannot be permitted to file written statement at a belated stage. He submits that a consistent view is taken that the extension of time can be granted only by way of explanation by recording reasons in writing. He submits that in the absence of any reasons recorded to extend time to file written statement the impugned order will require interference by this court.

7. Learned counsel for respondents (“defendant nos. 1 and 2”) submits that after the order of 1<sup>st</sup> November 2022 was passed recording ‘No Written Statement’, immediately application is filed on 6<sup>th</sup> December 2022 for setting aside the ‘No Written Statement’ order. Learned counsel for the respondents submits that the defendants contended before the trial court that they were under the impression that written statement was already filed; hence there was delay, however, actually written statement was not filed.

8. Learned counsel for the plaintiffs has referred to the particulars of the dates when the defendants had applied for extension of time to file written statement. The dates are

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<sup>2</sup> 2018(4) Bom. C.R. 452

mentioned in a tabular form on pages 36 to 38 of the petition.

The dates referred to by the plaintiffs indicates that 90 days to file written statement expired on 3<sup>rd</sup> April 2018. On 17<sup>th</sup> April 2018 an adjournment application was filed by the defendant seeking time to file written statement. Accordingly time was granted. Subsequently, even on 11<sup>th</sup> July 2018 an adjournment application was filed seeking time to file written statement and the same was granted.

9. Learned counsel for the defendants submits that in view of the covid period in between, no orders were passed and it was only on 21<sup>st</sup> April 2022 that 'No Written Statement' order was passed. It appears from the record that thereafter the plaintiffs applied to amend the plaint which was allowed. Since even to the amended plaint no written statement was filed again order was passed for "No Written Statement" on 1<sup>st</sup> November 2022. Thus, from the record it appears that the defendants did make attempts to seek extension of time to file written statement, but the same was not filed. However, it cannot be ignored that when 'No Written Statement' order was passed on 1<sup>st</sup> November 2022, defendant nos. 1 and 2 took immediate steps to file application at Exhibit-58 and 62

seeking leave to file written statement by recalling earlier orders.

10. Learned trial Judge has recorded that a casual approach should not be accepted for continued delay in filing written statement. Learned Judge has also observed that if the defendants are permitted to file written statement, no prejudice would be caused to the plaintiffs. It is also observed that the rights of the defendants are involved in the suit property and thus for deciding merits of the suit it would be necessary for the defendants to file written statement.

11. There is no dispute that the trial had not commenced when these orders were passed. Thus, in the interest of justice the learned trial Judge found it fit to permit the defendants to file written statement by imposing cost of Rs.1000/-. Learned Judge has directed the defendants to pay cost of Rs.1000/- for recalling both orders of 21<sup>st</sup> April 2022 and 1<sup>st</sup> November 2022.

12. Learned counsel for the respondents submits that the order is already complied and written statement is already filed by defendants. Considering the aforesaid peculiar facts

and circumstances of the case, a liberal view taken by the learned trial Judge for permitting to file written statement cannot be faulted. Hence, I do not see any reason to invoke the discretionary jurisdiction under Article 227 of the Constitution of India to interfere with the impugned order.

13. Considering the reasons recorded in the order permitting the defendant to file written statement and the facts and circumstances of the case as recorded above, the legal principles settled in the decisions relied upon by the learned counsel for the petitioners would not be of any assistance to the submissions on behalf of the petitioners. .

14. For the reasons recorded above, writ petition is dismissed.

**[GAURI GODSE, J.]**