

Vijayprakash Kashinath Tiwari	...	Petitioner
versus		
The Municipal Corporation of Greater Bombay and Ors.	...	Respondents

Mr. Rajesh Sahani i/by Devmani Shukla, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 6 NOVEMBER 2025

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 28 January 2025 passed by the learned Judge, City Civil Court, whereby the learned Judge condoned the delay in filing the written statement and allowed the affidavit in reply filed to the notice of motion on 17 September 2016 to be treated as written statement.
3. Learned Judge, City Civil Court was of the view that since the Defendant – Corporation has already filed an affidavit in reply to the notice of motion and disclosed its defence, the element of prejudice to the Plaintiff would be limited. Thus, placing reliance on the judgment in the case of **M/s. B. Jayantilal V/s. The Municipal Corporation of Greater Bombay and Anr.¹**, learned Judge, City Civil Court allowed the prayer to treat the affidavit in

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1 FA No.632 of 2011 dt. 4 May 2011

reply to the notice of motion as written statement.

4. Learned Counsel for the Petitioner submitted that, after the affidavit in reply came to be treated as written statement of the Defendants, learned Judge ought to have framed issues on the basis of the contentions in the written statement. However, the learned Judge, City Civil Court, is proceeding with the hearing of the suit on the basis of the issues which were earlier framed, while the suit proceeded without the written statement, without framing issues in the light of the written statement.

5. The grievance of the Petitioner to the extent of non-framing of the issues appears justifiable. If the Learned Judge, City Civil Court has allowed the affidavit in reply to be treated as written statement, then, upon perusal of the pleadings, including written statement, if any, issues arise for adjudication, those issues are required to be framed.

6. In view of the above, the Writ Petition stands disposed with a request to the learned Judge, City Civil Court to consider the necessity of the framing of additional issue/s and/or recast of issues in view of the written statement taken on record pursuant to the order dated 28 January 2025 and frame the issues that may raise for adjudication, and, thereafter, proceed with the suit.

(N.J.JAMADAR, J.)