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**(2011) 11 BOM CK 0011**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 1171 of 2011**

Bharat Vishnu Rade

APPELLANT

Vs

Gopal Khushal Kolhe

RESPONDENT

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**Date of Decision :** 28-11-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1

**Citation :** (2012) 4 ALLMR 392 : (2012) 2 BomCR 645 : (2012) 4 MhLj 526

**Hon'ble Judges :** S.S. Shinde, J

**Bench :** Single Bench

**Advocate :** G.S. Rane, for the Appellant; D.K. Thote, Advocate holding for Mr. B.S. Deshmukh, for the Respondent

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## Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, heard finally.

2. The point which is agitated in this writ petition is that, in a suit filed by the petitioner herein, sole defendant was allowed to file written statement after two years from issuance of the summons by the trial Court. It is the contention of the Counsel for the petitioner that, impugned order suffers from non assigning of the reasons. No reasons are assigned by the Judge while setting aside "No W.S. order."

3. The Counsel for the respondent would submit that, since the written statement is already taken on record and the costs amount is also deposited, this Court may not interfere in the extraordinary writ jurisdiction.

4. Upon hearing learned Counsel for the petitioner and learned Counsel for the respondent, I am of the considered view that, the order impugned in this writ petition has not mentioned any reason why "No W.S. order" is required to be set aside. The impugned order reads as " Heard. No W.S. Order is set aside on costs of Rs. 100/." Therefore, by single sentence, "No W.S. Order" is set aside by the trial Court.

5. The Hon"ble Supreme Court in the case of Aditya Hotels (P) Ltd. Vs. Bombay Swadeshi Stores Ltd. and Others, , while considering the provisions of Order 8 Rule 1 of the CPC taken a view that in case of extension of time for filing written statement, the Court should record reasons for such extension of time. The Supreme Court has observed in para7 of the said judgment relying upon the earlier judgment of the Supreme Court in the case of Kailash Vs. Nanhku and Others, at least brief reasons are required to be recorded while extending time for filing written statement.

6. Admittedly, in the present case, the impugned order suffers from non assigning reasons while setting aside "No W.S. order." In that view of the matter, impugned order is set aside. The application of the respondent at Exhibit30 is restored to its original file. The trial Court after hearing both the sides to decide the said application on merits, however, record the reasons in support of the order which will be passed on the said application.

7. Since the matter is pending for considerable period, the trial Court will decide the said application within one month from date of the receipt of this order. Writ Petition is allowed to the above extent and stands disposed of. Rule made absolute as indicated above.