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FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD.

WRIT PETITION NO.: 7421 OF 2010

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders.

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1. Heard. The trial Court has at the stage of judgment permitted Respondent/ defendant to file written statement after expressly recording that no sufficient cause therefor was made out. Learned counsel for petitioner states that the provisions of Order VIII Rule 1 C.P.Code have not been fulfilled in the present matter and hence Court below had passed an order of "no written statement" on 11th July, 2008. The matter proceeded further thereafter and at the stage of judgment the application came to be filed.

2. Advocate Shri A.I.Deshmukh, holding for Advocate Mr. B. G. Deshmukh for the Respondent has tendered affidavit in reply on record. He relies upon the same and further states that because of his illness the Respondent could not contact his Advocate. He further contends that that illness is

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substantiated before the trial Court by producing medical certificate.

3. Provisions of Order VIII Rule 1 C.P.C. are no doubt directory but still warrant a substantial compliance. Here, the trial Court has in paragraph No.6 found that the Respondent/ defendant has not brought on record sufficient cause. Then it has proceeded to further evaluate importance of filing written statement on record and because it found such opportunity vital, has taken written statement on record. The importance of filing written statement is apparent and that by itself cannot be the reason to permit its filing at belated stage. Trial Court has not recorded any finding as required by Order VIII Rule 1 C.P.C. On the contrary its finding is to the contrary.

4. I, therefore, found impugned order dated 2nd July, 2010 passed below Exhibit-16 in Regular Civil Suit No.1 of 2008

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unsustainable. Same is accordingly quashed
and set aside. Application at Exhibit-16 is
rejected. Petition is allowed accordingly.
No costs.

[B.P.DHARMADHIKARI, J.]

Dated:28/02/2011.
ans/7421