

ORDER BELOW EXH. 26

- 1] Perused the application and say. Heard both sides at length.
- 2] The defendant has requested to set aside no w.s. order and accept the written statement. The defendant submitted that the application filed by him for rejecting plaint on 28.04.2014 was decided on 10.04.2015. The defendant filed write petition against it. The proceedings was the suit were stayed by Hon'ble High Court. Meanwhile the defendant could not file written statement within the prescribe time. The matter pertains to the valuable immovable property, for it decision on merits the order be set aside in the interest of justice. The plaintiff strongly objected the application stating that it is not tenable and without any bonafide reasons. The reason for delay is not given. The defendant has filed the suit in respect of the same property. The contention regarding application under Order 7 Rule 11 has no concerned with the filing of written statement. The application be rejected with the costs of Rs. 10000/-.
- 3] The defendant relied upon the judgment of Hon'ble Bombay High Court in the case of Nandlal v. APMC 2006 (1) Mh.L.J. 128, and the plaintiff relied upon the judgment, in the case of Mont Blanc Properties v. Mont Blanc Co-operative Housing Society 2009 (1) ALL MR 3. In the earlier case the defendant served on 21.08.2003 filed written statement on 03.03.2004. The application for dismissal of suit Exh. 12 was decided on 11 February 2004 and the very next date the w.s. was filed. Mont Blanc's case, it was expounded that the denial an opportunity to the defendant file w.s. would frustrate the rights. The court can not be oblivious of their negligence in not filing written statement within time stipulated by law, and therefore allowed the written statement on costs of Rs. 50,000/-.
- 4] The record apparently reveals that the defendant was served on 10.03.2014. The written statement was not filed on the next date of rejection of the application exh. 17 under Order Rule 11. It was filed on 30.01.2006 i.e. after 34 months and some 20 days after service of summons. Having regard to the rights of the parties and the dicta laid down in cited authorities the application is required to be allowed on costs. The delay of about 35 months require to impose costs of Rs. 7000/- accordingly following order is passed.

ORDER

On payment of costs of Rs. 7000/- within a week the written statement be read and recorded, else the order shall be non-est. The suit is tried with Spl.C.S. No. 32/2007, the parties shall expedite the proceedings of the suit.

Sd/-

[A.A. Khan]

4th Jt. Civil Judge (S.D.)

Aurangabad.

Date : 03/02/2016

CERTIFICATE

I am affirm that the contents of this [P.D.F.](#), file Order are same, word to word, as per the original Order.

Name of the Stenographer	:-	Yogesh H. Gajbhiye
Court	:-	4 th Jt. Civil Judge (S.D.) Aurangabad.
Date	:-	03.02.2016
Order signed by the presiding officer on	:-	03.02.2016
Order uploaded on	:-	03.02.2016