

Special Civil suit 480/2009

Laxman Shankar Sarukte V/S Sushilabai Laxman Bhangare

Order Below Exh. 40

By this application the defendant prayed for filing the written statement. It is her contention that as per order passed by the Hon'ble District Court in Regular Civil Appeal No. 63/2020, she is permitted to file the written statement. The date given in the matter was 20.06.2022. However till that day the record and proceeding was not received in this court from the District Court. Moreover her daughter is expired in pandemic situation. Her husband is residing at Thane district. She is illiterate. Therefore she could not file written statement immediately.

The application is objected by the plaintiff by his reply vide Exh. 42. It is his contention that the defendant has not given any reason for not filing the written statement within time. There is the delay of 13 years in filing the written statement. The written statement has to be filed within the period of the 90 days. He prayed for the rejection of the application.

Perused record. Heard both sides. Both the sides have argued as per the content of the application and reply respectively. The learned counsel of the plaintiff relied on case of **Sudhir Ranjan thr. LRs. and Anr. V/S Himansu and Others 2022 Live law (SC) 492**. In the cited case the Hon'ble Apex court held that when the ex-parte decree is set aside and the suit is restored to file, the defendants cannot be relegated to the position prior to the date of hearing of the suit when he was placed ex-parte. He would be debarred for filing any written statement in the suit, but then he can participate in the hearing of the suit in as much cross-examination the witness of the plaintiff and address arguments. The case law cited by the learned counsel is not applicable to the case in hand. The reason is that in the present matter already the Hon'ble District Court have allowed the Regular Civil Appeal No. 63/2020 and thereby

set aside the Judgment and Decree passed in this suit and remanded the matter to this court with the specific direction to permit the defendant to file the written statement with the discretion to decide the time to be granted to the defendant. Therefore the delay, if any, caused earlier for filing the written statement is already condoned by the Hon'ble District Court and now that factor is not required to be looked into. The record substantiate the contention of the defendant that on 20.6.2022, the record and proceeding of this matter is not received by this court. The record shows that on 4.7.2022 the defendant filed the Vakalatnama and sought the time to file written statement and immediately on the next he moved this application. The defendant very well explain the reason for not filing the written statement immediately after the receipt of the record and proceeding. In fact on 4.7.2022 as time was granted to file the written statement, it cannot be say that there is any delay in filing the written statement. Hence the application needs to be allowed. Accordingly, I pass the following order.

ORDER

1. The application is allowed.
2. The written statement of the defendant be taken on record.
3. No order as to cost.

Date : 19/12/2022. Place : Nashik	Sd/xx (B. N. Ichpurani) 2 nd Jt. Cviil Judge Senior Division, Nashik.
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