

IN THE COURT OF SMALL CAUSES, AT MUMBAI
ORDER BELOW EXH.20
IN
R.A.D. SUIT NO.835 OF 2019

1. Sanjay Narang and anr.	Plaintiffs.
<i>Versus</i>	
1. Dr. Adi Ruttonji Nazir and ors.	Defendants.

Coram	:	S. B. Todkar, Judge, C.R.No.11 Date : 26/10/2021.
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ORAL ORDER :

1. This is an application filed by the defendant No.3 for setting aside 'no written statement' order dated 10/2/2021 and to take written statement on record.

2. Perused the application and say. Heard Ld. Advocate for plaintiff and defendant No.3.

3. It appears from the record that plaintiffs have filed suit against defendants for declaration on the grounds specifically mentioned in the plaint. It is an admitted position on record that on 5/8/2019 writ of summons was served upon the defendant No.3. In spite of giving sufficient opportunities to it, it has failed to file written statement on record. Hence, my Ld. Predecessor has passed 'no written statement' order against it on 10/2/2021. Defendant No.3 has filed present application on 23/3/2021. Defendant No.3 failed to file written statement within 30 days as per Order VIII Rule 1 of the Code of Civil Procedure, 1908. Defendant No.3 on oath stated that employee of defendant No.3 forgot to immediately bring the service of summons to the knowledge of directors of company

and papers remained buried under other office documents of the company in the inward department. Proceedings were brought to the knowledge of director of defendant No.3 for the first time somewhere in November 2019. The directors of defendant No.3 immediately met advocate and appraised him about the dispute between the parties. All papers and proceedings were sent to advocate, he prepared draft of written statement and counter claim are running into numerous pages, written statement was sent to directors for finalizing the same, there were corrections, after corrections resent it to the advocate for drafting final written statement and in the second week of March 2020 written statement was made ready by the advocate and thereafter due to Covid-19 they could not file written statement on record within time.

4. The provision under Order VIII Rule 1 of Code of Civil Procedure, 1908 does not deal with power of Court and also does not specifically take away power of Court to take written statement on record though filed beyond the time provided for and the plaint of plaintiff being going to be opposed, it shall be adjudicated on merit and for the fair adjudication of the matter in hand, this application deserves to be allowed as defendant No.3 on oath given sufficient reasons for delay for deciding the real controversy between the parties considering the nature of suit, allegations made against the defendant in the plaint, natural justice and opportunity of being heard, it is necessary to give opportunity to the defendant No.3 to put its defence. Defendant No.3 has already filed written statement on record alongwith present application. But at the same time, due to delay in filing the written statement delay is caused to proceed the matter. Therefore, plaintiff is entitled for the costs. Hence, I proceed

to pass the following order.

ORDER

1. Application is allowed.
2. No written statement order dated 10/2/2021 passed against defendant No.3 is hereby set aside, subject to costs of Rs.200/- payable to the plaintiffs.
3. After payment of cost to the plaintiffs, or deposit in the Court, the written statement of defendant No.3 be taken on record.

Sd/-

[S. B. Todkar]

Date : 26/10/2021.

Judge, Court of Small Causes, Mumbai.
[Court Room No.11].