

RCS No.256/2022
Madhukar Sadashiv Varpe
Vs
Kalavati Vasant Varpe

COMMON ORDER BELOW EXH. NO. 31 and 32

1. The defendant No. 1 and 3 has filed application at Exh.31 for setting aside the “No written statement” order passed against them and taking their written statement on record by condoning the delay for the same. The defendants also filed application at Exh.32 for setting aside “No say” order passed against them on status quo application at Exh.15.

2. The Ld. Advocate for defendants submitted that the defendant No. 1 has undergone knee operation whereas the defendant No.3 has undergone spine operation and due to the same they could not instruct their advocate to file their written statement and say on Exh.15 on record. The Ld. advocate further submitted that on 11/01/2024 “No written statement” was passed against defendant No. 1 and 3. He also submitted that on 26/01/2024 ‘No say’ on status quo application at Exh. 15 was passed against defendants. Further, he submitted that the delay of around 6 months 4 days in filing a written statement is not intentional, the written statement and defendants say on Exh.15 is essential for adjudication of the dispute between the parties. Therefore, prayed to set aside the “No written statement” order passed against defendant No.1 and 3 by condoning the delay and set aside ‘No say’ order passed on Exh.15.

3. The Ld. Advocate for the plaintiffs have filed their say overleaf of applications. He also submitted that the present applications have filed for prolonging the suit and to harass the plaintiffs. The Ld. Advocate also brought the attention of the Court that the defendants have not filed any medical documents in support of their contention. Therefore, prayed to reject both applications.

4. Perused applications and say filled by the plaintiff. Heard both sides.

5. In view of the provision of Order VIII Rule 1 of the Code of Civil Procedure, the defendants were duty-bound to submit their written statement within a stipulated period of 90 days. The summon was duly served to the defendants. On 07/11/2023 the defendants appeared through their advocate. The defendants have filed their written statement on 14/02/2024. Admittedly there is a delay of around 6 months 4 days in filing the written statement. However, the suit is for the injunction. The written statement is a preliminary defence of the defendants, where the defendants raise their objection to the plaintiff's claims and put forth their version of events, therefore, it is necessary for deciding the suit on merit.

6. Further, it is a well-settled principle of natural justice that no one should remain unheard. Moreover, in order to enable the Court to adjudicate and settle all the disputes involved in the present suit, it is necessary to permit the defendants to file their written statements and say on Exh.15. However, in my opinion, the defendants need to be saddled with the cost for causing delay in filing their written statement.

7. Considering the facts and circumstances of the matter at hand, and the reasons mentioned above I think it would be appropriate to allow the defendants to file their written statement on say on status quo application at Exh.15 on record. Accordingly, in the interest of justice and for deciding the suit on merit, I proceed to pass the following order.

O R D E R

- 1) The applications at Exh.31 and 32 are allowed subject to a cost of Rs.500/- each to be paid to the plaintiffs.
- 2) The delay in filing the written statement is condoned.
- 3) The written statements of defendant No. 1 and 3 be taken on record after payment of cost.
- 4) No say order passed on Exh.15 is set aside.
- 5) The defendants have liberty to file their say on Exh.15.

Sd/-

(Sagar S. Mohite)

**2nd Jt. C. J. J. D., Ghodegaon,
Dist. Pune**

**Dt.27/02/2024
Ghodegaon**

CERTIFICATE

I affirm that the contents of this P.D.F. file are the same word for word as per the original.

Name of the Court	: Sagar. S. Mohite, 2 nd Jt. C.J.J.D. and J.M.F.C., Pune.
Name of the Steno	: J. S. Kaite, Steno Grade - III.
Judgment date	: 27/02/2024.
Judgment signed by P.O. on	: 28/02/2024.
Judgment uploaded on	: 28/02/2024.