

MHJN060023372022



Reg. Civil Suit No. 310/2022
Kacharu & Ors. v/s Ramsing & ors
Passed On 14/02/2023

ORDER BELOW EXH. 17

1. This application is filed by Defendant No. 1 to 3 for setting aside “No Written Statement” order passed against them.
2. Perused application, say of Plaintiff and record. It is contended by the Defendant No. 1 to 3 that, delay caused to file written statement of due to illness of Defendant No. 2. They further submitted that, delay not caused by Defendant No. 1 to 3 intentionally. He further submitted that, if the order of no written statement is set aside, then, no loss cause to Plaintiffs, but if the application is rejected then, the Defendant No. 1 to 3 will suffer heavy loss. Hence, they prayed that in the interest of justice, no written statement order passed against them be kindly set aside.
3. Per contra, Plaintiffs have filed their say below this application and strongly resisted the application. Plaintiffs contended in their say that, there is no sufficient reason mentioned by Defendant No. 1 to 3 for the delay caused for filing their written statement. So, they prayed for rejection this

application. He further submitted that, if application is allowed, then heavy cost may imposed against Defendant No. 1 to 3.

4. Perused application, say and record. Heard Ld. Advocate for Defendant No. 1 to 3 and Plaintiffs for sufficient time. Admittedly Defendant No. 1 to 3 have not filed their written statement within stipulated time i.e. within 90 days from date of service of summons to them. Hence, automatically order of no written statement is passed against them. Present suit is filed by Plaintiffs for partition and separate possession. It is settled principal of law that rules and procedure have handmade to the administration of justice. If opportunity to put forth defense is not afforded to the Defendant No. 1 to 3, then grate prejudice would cause to the Defendant No. 1 to 3. Per contra, there is no any prejudice or harm cause to the Plaintiffs. In **R.N. Jadi & Brothers and others vs. Subhaschandra, reported in (2007) 6 SCC 420,** wherein Hon'ble Apex Court held that,

Order 8 Rule 1 and proviso thereto are directory and not mandatory in nature and it do not take away the powers of the court to take written statement on record though file beyond 90 days. Proviso of Order 8 Rule 1 only cast an obligation on Defendant No. 1 to 3 to file written statement within time. The time scheduled contemplated by Order 8 Rule

1 shall be the Rule and departure there from an exception, made for satisfactory reasons only.

5. So, in my view in the interest of justice and for the importance of final decision of this matter on merit said application is deserves to be allowed. But for unnecessary delay and inconvenience to opposite side must be compensated with cost. Hence, in the interest of justice, it will be appropriate to impose certain cause on Defendant No. 1 to 3, while allowing the said application. Resultantly, I proceed to pass following order -

ORDER

- a. Application is allowed.
- b. No written statement order passed against Defendant No. 1 to 3 are set aside subject to cost of ₹200/- (Rs. Two Hundred Only).
- c. Cost of ₹200/- (Rupees Two Hundred only) shall be paid to the Plaintiffs on or before next date.

Date: 14/02/2023.
Place: Bhokardan.

(C. S. Deshpande)
Jt. Civil Judge Jr. Dn.,
Bhokardan.