

ORDER EBLow EXH-45 IN REGULAR CIVIL SUIT NO.311/2016

(CNR:MHAH190010572016)

01. This is an application filed by the defendant No. 10 for setting aside No W.S. order dated 23/03/2018.

The application, in brief, is as under :-

02. According to above defendant, after service of summons, she appeared, however, in the meantime, as she was residing at Tal. Gevrai, Dist. Beed, she could not file her written statement within limitation. Hence, No W.S. order came to be passed against her. According to above defendant, she has not caused intentional delay in filing of written statement and hence, she may be permitted to file the same.

03. Plaintiff has resisted the application by filing say below it and stated that, the reason given by above defendant for not filing written statement in time is not proper. In spite of availing sufficient time, above defendant has intentionally failed to file written statement. Hence, plaintiff prayed to reject the application with costs.

04. I have gone through the record, it reveals that on 29/11/2017, above defendant No. 10 was served, but she failed to file her written statement within period of limitation which expired on 28/02/2018 and the present application is made on 12/07/2018. Therefore, there is delay of almost four and half months in filing of written statement.

05. However, the present suit is filed for partition and separate possession. The above defendant, being real sister of plaintiff, is necessary party to the present suit. If that being so, in order to have effectual adjudication of the matter, an opportunity is required to be granted to above defendant for raising her defence. As mentioned above, considering the nature of the suit, the delay of almost four and half months in filing written statement can well be compensated in terms of costs to the plaintiff. Hence, considering all the aspects, I pass the following order :-

ORDER

- (01) The application is allowed subject to costs of Rs.400/- to the plaintiff to be deposited in the Court.
- (02) Written statement of defendant No. 10 be taken on record after receipt of costs to the plaintiff.

Date : 29/09/2018.
Place : Shevgaon.

(A. N. Kulkarni)
Civil Judge J. D., Shevgaon.