

ORDER EBLow EXH-35 IN REGULAR CIVIL SUIT NO.311/2016

(CNR:MHAH190010572016)

01. This is an application filed by the defendant No. 3 for setting aside No W.S. order dated 15/03/2017.

The application, in brief, is as under :-

02. According to above defendant, after service of summons, he appeared, however, in the meantime, as daughter of defendant No. 3 was suffering from illness. Hence, he could not file his written statement within limitation. Hence, No W.S. order came to be passed against him. According to above defendant, he has not caused intentional delay in filing of written statement and hence, he 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 17/11/2016, above defendant No. 3 was served, but failed to file their written statement within period of limitation which expired on 16/02/2017 and the present application is made on 10/10/2017. Therefore, there is delay of almost eight months in filing of written statement.

05. However, the present suit is filed for partition and separate possession. The above defendant, being real brother 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 his defence. As mentioned above, considering the nature of the suit, the delay of almost eight 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.800/- to the plaintiff to be deposited in the Court.
- (02) Written statement of defendant No. 3 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.