

ORDER BELOW EXH. 17 IN R.C.S. NO.44/2023

Present application has been filed on behalf of defendants no. 1 and 2 for setting aside “No written statement” order passed against them on 16/06/2023 vide Exh.1, along with permitting them to file their written statement on record.

2. The Learned Advocate for defendants no. 1 and 2 contended that due to non-availability of necessary information and documents, he is prevented from filing Written Statement within stipulated period. Therefore, he prayed for setting aside the no written statement order, passed below Exh.1 on 16/06/2023 and prayed for granting permission to file written statement on record.

3. The plaintiff has resisted the application by filing his say on the overleaf of present application. The Learned Advocate for the plaintiff contended that present application is false and frivolous. Hence, prayed for the rejection of the application along with cost.

4. Perused the application and say. Heard, Learned Advocate for defendants No. 1 and 2.

5. Record shows that on 03/03/2023, defendants no. 1 and 2 are served with the suit summons. Therefore,

written statement of defendants no. 1 and 2 ought to have been filed till 01/06/2023. Delay of more than one year and eight months appears to have been caused for filing of written statement of defendants no. 1 and 2.

6. The present suit has instituted for measurement of suit property and perpetual injunction. Present application is supported with an affidavit of defendant no.1. Hence, considering the nature of the suit rights of both parties are involved in the suit property. Therefore, present suit is required to be decided on merit.

7. According to provision of Order VIII Rule 1 of Code of Civil Procedure, it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not specifically take away the power of the Court to take the written statement on record though filed beyond the time as provided for. The Court has to take into consideration the cause for the delay.

8. The reasons for delay are not deliberate or intentional, it seems justifiable. Therefore, in the interest of justice to decide the present suit on merit, fair opportunity must be given to defendants no. 1 and 2. Hence, the order

dated 16/06/2023 will have to be set aside and the written statement filed by defendants no. 1 and 2 will have to be taken on record. However, the delay caused in filing written statement can be compensated by imposing cost on defendants no. 1 and 2. Hence, I pass following order :-

:: **ORDER** ::

1. Application at Exh.17 is hereby allowed.
2. The order of “No written statement” passed below Exh.1 on 16/06/2023 is hereby set aside, subject to cost of Rs.500/- (Rupees Five Hundred Only), payable to the plaintiff by defendants no. 1 and 2, jointly.
3. On payment of cost the written statement of defendants no. 1 and 2, be taken on record.

Sd/-XXX

Date:- 03/02/2025
Place:- Jamkhed.

(Anushri B. Phand)
Jt. Civil Judge Junior Division,
Jamkhed