

ORDER BELOW EXH. 25 IN R.C.S. NO. 202/2022

Present application has been placed on behalf of defendants no. 5 & 6 for setting aside "*Ex Parte*" order passed against them along with permitting them to submit their written statement. Plaintiff has resisted the application by filing his say. Perused the application and say. Heard, learned advocates appearing on behalf of both the parties. From the record, it appears that on 30/07/2022, defendant no. 5 & 6 have served with the suit summons. However, due to failure on their part to appear in the suit to answer the claim of plaintiff, on 07/10/2022, present suit is ordered to be proceeded *ex-parte* against the defendant no.2 to 6. Thereafter, on 06/05/2023, present application has been placed on behalf of defendants no. 5 & 6. No doubt, delay of more than six months appears to have been caused for appearance and submission of written statement of defendants no. 5 & 6. However, the grounds as averred in present application appears to be justifiable and well founded. On perusal of plaint, it appears that through present suit, plaintiffs have sought the reliefs pertains to measurement and demarcation of boundaries of the suit property. Considering the involvement of immovable property in the suit and the reliefs sought by the plaintiff against defendants, it is desirable to decide the present suit on merit. So far as provision of Order VIII Rule 1 of Code of Civil Procedure is concern, said provision is not mandatory but same is directory in nature and defendant can be permitted to submit their written statement even after expiry of period of limitation, if their exists unavoidable circumstances preventing the parties from submission of written statement within stipulated period. Therefore, in view to decide the present suit on merit and to give fair

opportunity of being heard to defendants no. 5 & 6, they need to be permitted to submit their written statement. So far as the stage at which present application has been given is concern, after the suit is ordered to be proceeded *ex-parte* and without written statement, plaintiff has filed his affidavit in lieu of examination-in-chief. Having regards to the stage at which application is given, the conduct on the part of defendant no. 5 & 6 as to causing delay, need to be viewed by imposing heavy cost. Hence, I pass following order :-

:: **ORDER** ::

1. Application is allowed.
2. “*Ex parte*” order passed against defendants no. 5 & 6 stands set aside and they are permitted to submit their written statement subject to cost of Rs.2,000/-, payable to the plaintiffs, jointly or severally.

Shrigonda
Date :- 03/07/2023

(H. J. Pathan)
3rd Jt. Civil Judge, S.D., Shrigonda.