

ORDER BELOW EXH. 27 IN R.C.S. NO.202/2022

Present application has been placed on behalf of defendant no.1 for setting aside “No written statement” order passed against him along with permitting him to submit written statement. Ld. advocate appearing on behalf of plaintiff has resisted the application by filing his say. Perused the application and say. Heard, learned pleaders appearing on behalf of both the parties. From the record, it appears that on 20/08/2022, defendant no.1 is served with the suit summons. However, he failed to submit his written statement as a result of which, present suit is ordered to be proceeded without written statement of defendant no.1. Written Statement ought to have been submitted atleast till 18/11/2022. Delay of more than 6 months appears to have been caused for submission of written statement of defendant no.1. However, the grounds as contended in present application, appears to be justifiable and well founded. On perusal of plaint, it appears that through present suit, plaintiff has sought the relief pertains to measurement of the suit property along with demarcation of the boundaries thereof. Having regards to the nature of reliefs sought, 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 his 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 defendant no.1 , he need to be permitted to submit his 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. He has also filed and affidavit in lieu of examination-in-chief of witness on his behalf. Having regards to the stage at which application is given, conduct on the part of defendant no. 1 as to causing delay, need to be viewed by imposing heavy cost. Hence, I pass following order :-

:: **ORDER** ::

1. Application is allowed.
2. "No written statement" order passed against defendant no.1 stands set aside and he is permitted to submit his written statement, subject to cost of Rs.1000/-, payable to the plaintiff.

Shrigonda
Date :- 03/07/2023

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