

ORDER BELOW EXH. 39 IN R.C.S. NO.316/2015

1. Present application has been placed on behalf of defendant to counter claim for condonation of delay as caused for submission of his written statement to counter claim made by defendant no.3 to the suit, along with permitting him to submit his written statement to counter. Plaintiff to counter claim has resisted the application by filing his say at Exh.41. Perused the application and say. Heard, learned pleaders appearing on behalf of both the parties. From the record, it appears that on 22/04/2017, defendant no. 3 to the suit namely Balasaheb Sopan Nimbalkar has made counter claim. Therefore, written statement to counter claim ought to have been submitted at least till 20/07/2017. Present application has been placed on 22/04/2024. Delay of more than 7 years appear to have been caused for submission of written statement of defendant to counter claim.

2. Learned advocate for plaintiff to counter claim has relied upon the judgment of Hon'ble Bombay High Court in case of *Saraswati Gurushantayaa Swami Vs. Sulbha Malappa Chinchole and other, [2012(2) Mh.L.J.], page no. 160* wherein Hon'ble Bombay High Court has observed that time to file written statements can be extended by the court only for just, sufficient and exceptional reason. Learned advocate for plaintiff to counter claim has also relied upon the judgment of of Hon'ble Apex Court in case of *Atocom Technologies Ltd. Vs. Y.A. Chunawala And Company and others, [2019(2) MH.L.J], page no. 26*, wherein Hon'ble Apex Court has

observed that defendants must satisfactorily demonstrate a valid reasons for non filing of written statement within 30 days. He has also relied upon the judgment of Hon'ble Apex court in case of **Kailash Vs. Nanhku and Others, [2005(2) Mh.L.J.], page no. 274**, wherein Hon'ble Apex Court has observed that, the provision of Order VIII Rule 1 of Code of Civil Procedure is not mandatory but same is directory in nature and defendant can be permitted to submit written statement even after expiry of period of 90 days. Thus, in light of ratio and observation made in judgments supra, it is to be seen whether defendant to counter claim has shown valid reasons for non filing written statement within stipulated period.

3. So far as grounds under which delay to submit written statements is sought to be condoned are concerned, it is specifically contended in present application that as necessary documents and information was not made available, written statement could not be submitted within stipulated period. The grounds as to the non availability of the documents as contended in present application seems to be justifiable and well founded. Thus, valid reasons for non filing of written statement within stipulated period, can be said to have been shown by the defendant to counter claim.

4. On perusal of counter claim, it appears that through counter claim, plaintiff to counter claim sought the partition claiming 2/3 share in the suit property. Considering the nature of relief sought and involvement of immovable property in the counter claim, it is desirable to decide the counter claim on merit. Thus, in view to

decide the counter claim on merit and to give fair opportunity of being heard to defendant to counter claim, he need to be permitted to submit his written statement. At the same time, conduct on the part of defendant to counter claim need to be viewed by imposing adequate cost upon him. Hence, I pass following order :-

:: **ORDER** ::

1. Application at Exh.39 is allowed.
2. Delay as caused for submission of written statement of defendant to counter claim, is hereby condoned and defendant to counter claim is permitted to submit his written statement to counter claim, subject to cost of Rs.5,000/-, payable to the plaintiff to counter claim.

Shrigonda
Date :- 22/07/2024

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