

ORDER BELOW EXH. 21 IN R.C.S. NO.284/2021

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 10/03/2022, 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. Delay of more than 1 year 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 declaration and partition of the suit property. Having regards to the nature of reliefs sought, defendant No.1 is a necessary party in whose absence no effective decree can be passed. Considering the relief 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 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. 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.1,000/-, payable to the plaintiff.

Shrigonda

Date :- 21/06/2023

(H. J. Pathan)

3rd Jt. Civil Judge, S.D., Shrigonda.