

ORDER BELOW EXH. 17 IN R.C.S. NO.334/2023

Present application has been placed on behalf of defendant no. 4 for setting aside "No Written Statement" order along with permitting him to submit his written statement. Plaintiffs have resisted the application by filing their say. Perused the application and say. Heard, learned pleaders appearing on behalf of both the parties. From the record, it appears that on 11/12/2023, defendant no. 4 is served with the suit summons, therefore written statement of defendant no.4 ought to have been submitted at least till 09/03/2024. However, on 18/07/2024, defendant no. 4 has preferred present application. Delay of more than 4 months appears to have been caused for submission of written statement of defendant no. 4. However, grounds as contended in present application, seems to be justifiable and well founded. On perusal of plaint, it appears that through present suit, plaintiffs have sought the reliefs of perpetual injunction against the defendant nos. 1 to 4 along with cancellation of judgment and order passed by Tahasildar, Shrigonda under Section 5(2) of Mamalatdar's Court Act, 1906, in proceeding bearing No. 42/2022. Considering the reliefs sought by the plaintiffs 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. 4, he need to be permitted to submit his written statement. Hence, I pass following order :-

:: **ORDER** ::

1. Application at Exh.17 is allowed.
2. Delay as caused for submission of written statement of defendant no. 4 is hereby condoned and he is permitted to submit his written statement, subject to cost of Rs.1,000/-, payable to the Plaintiffs.

Shrigonda
Date :- 19/08/2024

(H. J. Pathan)
2nd Jt. Civil Judge, S.D., Shrigonda.