

Order Below Exh.1 in RCS No. 80/2013

Omprakash Sharma V/s. Shubham Ingle

(Passed on 15th of December, 2025)

This is an application filed by the defendants to set aside Ex-parte order passed on 11.02.2014 and seeking permission to file written statement.

2. This the suit for specific performance and mandatory injunction. According to the defendants, suit summons served to them but they failed to appear; hence, Ex-parte order passed against them. It is stated that defendant No.1 died on 12.03.2016; therefore, LRs of defendant No.1 brought on record. Accordingly, suit summons issued to defendant No.1A who is wife of defendant No.2. Summons was duly served to her but she failed to appear. Hence, Ex-parte order passed against her on 28.07.2019. It is submitted that defendants are labourer/agriculturalist having 4 daughters and 2 sons. Son of defendant No.2, namely Shubham Ingle (deceased defendant No.1) had committed suicide in the year 2016. Due to sudden death of their son, defendants were in mental agony. Due to legal technical aspects of Fragmentation Act, the defendant conveyed to the plaintiff that the sale will not be carried out; so, amount of Rs. 70,000/- invested in FD may kindly be withdrawn and if any support is required, he is ready to help.

3. It is further submitted that as the defendant No.1A was suffering from illness and economic crises, defendant No.1 took her at Pune to their daughter's home. Their son namely Vijay Ingle who was military man died on 07.10.2024. After demise of their son, wife of defendant No.2 quarreled with him thereby police complaints filed by them. For the above reasons, defendants were not in good mental

condition to contest the matter. Thus, prayed to set aside Ex-parte order and seeking permission to file written statement.

4. The application has been strongly resisted by plaintiff by filing say at Exh.71 and denied all the contentions. According to plaintiff, the application filed with malafide intention to deprive the plaintiff from his right at belated stage of final argument. It is submitted that defendants approached before this court after inordinate and unexplained delay of almost 11 years. The reasons stated in the application such as mental agony, economic crises, family disputes are not "sufficient cause" under O.IX R.13 of the CPC. Summons were duly served to both defendants and they were aware about pendency of proceeding. Despite knowledge, defendants were deliberately chosen not to appear. After death of defendant No.1, his LRs brought on record and then defendant No.1A also served with suit summons. Time to time, the court has issued sue moto court motion notice to defendants. In spite of multiple opportunities are given to defendants by this court, they remain absent. The conduct of defendants throughout proceeding reflects gross negligence, intentional avoidance and malafide attempt to delay justice. Present application is nothing but abuse of process of law. Allowing defendants to file written statement at this extremely belated stage will cause serious prejudice to the plaintiff. Considering all these grounds, plaintiff prays for rejection of the application with costs.

5. Read the application and say. Heard Ld. Advocate for the defendant and Ld. Advocate for plaintiff. Perused the record. From the record, it reveals that, present suit is previously filed for mandatory injunction. But subsequently by amendment, plaintiff sought relief of specific performance of contract along with mandatory injunction. In present suit, summons is served to the

defendant no. 1 and 2 on 04.01.2014 and on 08.01.2014 vide Exh. 7 and 8 respectively. Therefore, it is crystal clear that defendants are aware about pendency of proceeding. Despite knowledge, defendants are not appeared and Ex-parte order passed against them on 11.02.2014. It is matter on record that due to death of defendant No.1, his LRs brought on record as defendant No.1A who also served with summons but she remained absent; hence, Ex-parte order passed against her on 28.07.2019.

6. In present suit, the defendants have taken grounds for setting aside that their mental agony due to death of their sons, their economic crises and family dispute between them. They are also seeking permission to file written statement on record. Therefore, it is necessary to refer relevant provisions.

Sec.5 of the Limitation Act, 1963 deals with ***Extension of prescribed period in certain cases***- *Any appeal or any application, other than an application under any of the provisions of order XXI of the Code of Civil Procedure, 1908, may be admitted after prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*

Order VIII Rule 1 of the Code of Civil Procedure, 1908, 1. ***Written statement*** - *The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence.*

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons

to be recorded in writing, but which shall not be later than ninety days from the date of service of summon.

7. From the above provisions, it clears that after service of summons within 30 days, defendant has to filed written statement but not later than 90 days. Though, word 'shall' is used by legislature, it makes the provision mandatory but in various judgments of Hon'ble Supreme Court, it is held that though the provision makes mandatory but it is directory in nature. If **sufficient or reasonable cause** is shown by defendants, written statement can be allowed after prescribed period. As well as for condonation of delay, the applicant has to satisfy the court with **sufficient cause** for not applying within prescribed period. That means in both the provisions “sufficient cause” is required.

8. On the point of filing written statement and sufficient cause, I would like to refer citations of the Hon'ble Supreme Court in **Shaikh Salim Haji Abdul khayumsab V/s Kumar 2005 CJ (SC) 1217** wherein it is held that as per Order VIII Rule 1 of the Code of Civil Procedure, *“an obligation casts on defendant to file written statement within 30 days from the date of service of summons on him and within extended time falling within 90 days.”* The Hon'ble Bombay High Court in **Shailaja Sawant V/s Sayajirao Ganpatrao Patil 2003 CJ (Bom) 991** wherein it is held that *“the court has exercised its power to allow written statement after prescribed period in exceptional cases with reason to be recorded in writing and cannot be exercised by the defendant as matter of right.”* In *Collector, Land Acquisition, Anantnag v. Mst Katiji*, the Supreme Court has held—

“... The expression `sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being

the life-purpose for the existence of the institution of Courts. But the message does not appear to have percolated down to all the other Courts in the hierarchy.” It is settled position of law that day to day delay should be explained and there must be reasonable/sufficient cause to condone delay.

9. In light of aforesaid legal principles, it is to be seen that whether grounds stated by defendants are fall under the term of “sufficient cause/reasonable cause.” The term “sufficient cause” or “reasonable cause” has not been defined in the Limitation Act, 1963 nor in the General Causes Act, 1897. Hence, we have to refer to general definition of "Sufficient cause" which means a strong, reasonable, and unavoidable reason for an action (or inaction) that would otherwise be considered a fault, like a delay; it's not just any excuse, but one showing no negligence, like a sudden illness, accident, or court closure, allowing courts to grant fairness by excusing a party, especially in legal contexts like condoning delayed appeals. Essentially, it's an adequate reason that prevents someone from meeting a deadline or obligation, ensuring justice over mere technicality.

10. Coming to the present case in hand, defendants stated grounds such as death of their son, family disputes, economic crises and illness of defendant No.1A, for non-appearance before the court. To substantiate their contentions, they produced on record death certificate of defendant No.1, Shubham Ingle and medical papers of defendant No.1A. From such record, it reveals that the death certificate of previous defendant No.1, Shubham Ingle is not legible; therefore, is not desirable to make any observation for same; however, death of Shubham Ingle is not disputed. On perusal of medical papers, it appears that defendant No.1A was taking medical

treatment during the period of 2016 to 2018. For sake of argument, if we assume that defendants are suffering from mental agony for death of their son, economic crises and various ailments; but there is no sufficient documents on record which shows that defendants have suffered for the reasons stated above since 2014 to 2025.

11. It is to be noted here that the court has issued court motion notice to defendants twice on 09.10.2018 and 12.03.2025 which are duly served upon them. Defendants are appeared on 06.10.2025, while suit is pending for final argument. It is worthy to note here that the suit is pending for more than decade. After service of previous court motion notice in the year 2018, defendants have an opportunity to appear before the court. Suit summons is duly served to both the defendants on 11.02.2014 and after bringing LRs of defendant No.1 on record, defendant No.1A also served with suit summons on 28.07.2019. Since 2019 to 2025, defendants have not appeared and at the end of year, while suit is pending for final argument, they have appeared and seeking for setting aside Ex-parte order. The delay is more than 11 years which is inordinate and cannot be compensated in terms of money. There is no explanation or sufficient material on record justifying non-appearance of defendants for the period of more than a decade. If the application will allow, the suit will commence once again. I do not find any sufficient cause to condone delay for setting aside Ex-parte order and in filing written statement. Hence, I pass the following order;

ORDER

The application is hereby rejected.

Date: 15.12.2025
Balapur

(Smt. D. M. Patil)
Civil Judge Junior Division, Balapur.

I affirm that the contents of this P.D.F. File Judgment/Order are same, word to word, as per the original order.		
Name of the Court	:-	Smt. D. M. Patil Civil Judge, J.D. & J.M.F.C., Balapur
Name of the Stenographer	:-	A.S.Gawali
Date of Decision	:-	15.12.2025
Order signed by PO on	:-	15.12.2025
Order uploaded on	:-	16.12.2025