

As per order dated 3.07.2008 below Exh. 1, the suit proceeded without written statement of the defendant no. 1 to 4, 6, 7 14 to 17. The said order is to be set aside and the defendant no. 1 to 4, 6, 7, 16 & 17 be permit to file written statement as claimed in the instant application on following grounds :-

The aforesaid defendants were the rustic persons and resident in the villages and they were not having any knowledge about the proceeding and Law. Therefore, they were unable to attend the Court and file their written statement within stipulated period.

2). The plaintiff as per his say prayed to reject the application as the aforesaid defendants failed to file their written statement within stipulated period as they want to prolong the matter. However contended if instant application is allowed heavy costs be imposed.

3). On hearing the Learned Advocate G.P.Bhala for the plaintiff and the Learned Advocate Shri B.N. Vighne for the aforesaid defendants, following points are for my

determination. Accordingly my findings are given.

Points.

Finding.

1. Whether defendants made out special and exceptional circumstances for not filing their written statement Within stipulated time ?

.. Yes.

2. Whether defendants are entitled to set aside the order dated 3.07.2008 and filing written statement on record. ?

... Yes.

3. What order.

Reasons

AS TO POINT NOS. 1 AND 2 :-

4). The time limit of filing written statement after service of summons by the defendant is of 30 days and thereafter, upto the extended period of 90 days in pursuance of order 8 Rule 1 of C.P.C.

Though the said period in the provision is shown as shall but it is held to be directory and not mandatory by the **Hon'ble Apex Court in the case of Salem Adv. Bar Association Tamuinadu -Vrs. Union of Indian, Reported in A.U.I.R. 2005 (SC 3353)**

5). However, the Hon'ble Apex Court, in the above case held in view of Pro. 8 Rule 9 and 10 C.P.C., the written statement, can be permitted to be filed beyond the aforesaid stipulated period only if party satisfies the Court about special and exceptional circumstance for non filing the written statement in within time.

6). In view of the findings of the Hon'ble Apex Court, supra the aforesaid defendants are to satisfy this court about special and exceptional circumstance for non filing their written statement within stipulated period. To established the same, they contended in the instant applicant that, the aforesaid defendants were the rustic persons and resident in the villages and they were not having any knowledge about the proceeding and Law, therefore they are unable to file their written statement within stipulated Period. This facts is stated by them by their affidavit on oath.

Therefore, I consider the aforesaid settlement facts, and that is a special and exceptional circumstance, as just ground to set aside the order dated 3.07.2008 below Exh. 1 and permit them to file written statement.

However it is settled principle that, while setting aside such order, the defaulting party is to be saddle with cost for the delay in filing written statement.

7). The order of suit to proceed without written statement of the aforesaid defendants as passed on

3.07.2008. The instant application is filed on 12.2.2009 i.e. after delay of 7 months and 09 days.

Such delay caused hardships of plaintiff and also delay in proceeding of suit and disposing of the suit as per Law. Therefore, considering such, delay, the aforesaid defendants is to be saddled with heavy costs.

8). Regarding costs, accordingly to the plaintiffs Learned Advocate Shri G.P.Bhala Rs. 1500/- be imposed on the aforesaid defendants. Whereas, according to the Learned Advocate Shri B.N.Vighne, their client i.e. Defendants are poor and therefore meager cost of Rs. 200/- be imposed. In pursuance of the provisions of code mentioned supra, the delay mentioned supra the costs of Rs. 500/- will suffice the means. to me. Accordingly points no. 1 and 2 answered affirmative and following order is passed.

Order.

Application is allowed subject to costs of Rs. 500/- (Rs. Five Hundred) payable by the defendants Nos. 1 to 4, 6, 7, 16 and 17 to the plaintiff on the following grounds :-

After payment of costs to the plaintiff as mentioned above the order of suit to proceed without written statement of the aforesaid defendants dated 3.07.2008 below Exh . 1 is set aside and they are permitted to file their written statement on record.

Sd/-

(D.A.Shrisunder)

Dt.15-02-2011

Civil Judge, Jr. Dn., Deulgaon Raja