



ORDER BELOW EXH.44
(Passed on 21st day of July, 2023)

The present application is filed by Non-Applicant for setting aside order dated 16/02/2021 passed below Exh.1 and seeking permission to file reply/written statement on record.

2) Non-Applicant contended that he has received the summons of this Court accordingly he put in his appearance by filling Vakalatnama on 16/01/2021 *vide* Exh.10 on record. He was represented by Ld. Advocate Shri S. J. Gop. It is submitted that during the said period there was pandemic situation prevailing through out the nation. Due to which, the working of the Court gets hampered. It is specifically submitted that non-applicant was Covid positive as also due to accident he was required to be operated by Dr. Kulakarni at Chandrapur. In such situation he could not contact with his Ld. Advocate with regard to day to day proceeding of the present case. Therefore, this Court on 16/02/2021, proceeded in the instant case without reply/written statement of non-applicant by passing order below Exh.1. It is further submitted that the application for interim relief has been decided by the Court without reply of non-applicant and the non-applicant came to know about the same when he got knowledge about execution of warrant for recovery against him. With these submission, the non-applicant prayed that opportunity needs to be given the non-applicant to defend his case by setting aside order dated 16/02/2021 passed below Exh.1.

3) The Ld. advocate for applicant has filed say on the back leaf of the present application and thereby strongly opposed with submission that the reason mentioned in the application is not reasonable and sufficient. In addition to the same he has submitted that there is recovery of maintenance amount of Rs. 3,10,000/- against non-applicant. With these submission, he prayed for rejection of present application.

4) Perused the application and say filed by Applicant. On perusal of record and roznama, it appears that Non-Applicant was duly served and he has put in his appearance by filling Vakalatnama on 16/01/2021 *vide* Exh.10 and also filed an application for grant of time to file reply/written statement on record. Thereafter the matter was adjourned for 25/01/2021, then 11/02/2021 and for 16/02/2021. However, due to absence of non-applicant and his Ld. Advocate, order came to be passed by this Court below Exh.1 and thereby matter is proceeded without reply/written statement of Non-applicant.

5) The reason as mentioned the application seems to be on the ground of COVID-19 pandemic situation. No doubt during COVID period, working of Court was hampered to certain extent as also day to day life of every individual has adversely affected by pandemic situation. As per the submission the non-applicant with regard to medical exigency and due to which he could not contact with his Ld. Advocate sounds to be reasonable. As the reason mentioned in the application as well as taking into consideration that the application is well supported by an affidavit, I do not find

any reason to disbelieve the same. The reason for non-appearance and non-filing of written statement/reply by non-applicant appears to be plausible. Inability on the part of non-applicant to appear and file the written statement/reply is not deliberate attempt and appears to be bonafide one for which non-applicant need not be suffered.

6) However, the application is filed under section 12 of Protection of Women from Domestic Violence Act, 2005. Therefore, to decide the actual controversy between parties hereto, their respective submission needs to be taken into consideration. The reasons for not filing written statement/reply within prescribed time as mentioned in the application seems to be bonafide and not a deliberate one. It appears that the reply/written statement has been filed by non-applicant alongwith the present application. Therefore it appears that without causing further delay non-applicant demonstrated his bonafides. Due to pandemic situation, he could not instruct his Ld. advocate within stipulated period. If permission is not granted to the non-Applicant to file written statement/reply on record, then it will cause serious prejudice to him. However, Applicant will not suffer any loss. Greater hardship would be caused to the non-Applicant than Applicant. If permission is granted then it will be convenient for the Court also to adjudicate the matter on merit.

7) However, it is the principle of natural justice that no one should be condemned of being unheard. Therefore, opportunity needs to be given to the Non-Applicant to file written

statement on record. As, also it is opportune to decide the case on merit. I do not find any impediment to set aside order dt.16/02/2021 passed below Exh.1. Resultantly, I am of the view that, permission has to be given to file written statement/reply on record to the Non-Applicant. As far as the costs is concerned, no doubt, the reason for non filing of written statement/reply within stipulated period is entirely based on pandemic situation. However, as discussed earlier in foregoing paragraph, it is just and proper to impose costs of Rs.500/- on the Non-Applicant to compensate such delay for non-filing of written statement/reply withing prescribed period. In the result, I pass the following order:

ORDER

1. The application is allowed. The Order dt.16/02/2021 passed below Exh.1 is hereby set aside.
2. The permission to file written statement/reply is granted subject to payment of cost of Rs.500/- by the Non-Applicant to the Applicant.
3. Non-Applicant is permitted to file written statement/reply on record upon compliance of the order of cost.

Place : Rajura
Date :- 21/07/2023

(**Nikhil L. Hemne**)
Judicial Magistrate, First Class
(Court No.2), Rajura