

In the Court of Judge, Co-operative Court Thane at Thane
(Presided over by Smt. S. K. Tonpe, Judge)

Dispute No. CCT 51/2023
CNR No. MHCO04-000051-2023

Ambhe Bhumi CHS Ltd.

Disputant

V/S

Mr. Akhtar Hussein Hamidun

Opponent

Order
(Below application Exh. 11)

1. The present application is filed by the opponent for setting aside “no written statement” order passed against the opponent. The opponent stated the disputant has filed present dispute against the opponent for the relief of recovery of money. The opponent was served with the summons and notice of the present proceeding on 20/06/2023. The opponent through advocate appeared on 01/09/2023 and had sought time to file WS which was granted. The disputant society has also sued on another member of the society viz. Mr. Prabhakar Ramchandra Chavan who has been prosecuting various litigations and proceedings against the disputant society. Mr. Prabhakar Ramchandra Chavan had collected the compilation of the present dispute with a view to engaging a suitable advocate to represent himself as well as this opponent in the present proceedings. The said Mr. Prabhakar Chavan had approached the undersigned advocate and disclosed to him the relevant facts. However before Mr. Prabhakar Chavan could supply the requisite documents to the advocate he suffered with serious spine injury,

which required him immediate hospitalization. He then underwent a critical surgery to his spine and as such was bed ridden for long time. In view of the aforesaid the undersigned advocate could not prepare the written statement within time. After recovering from his injury, the said Mr. Prabhakar Chavan supplied copies of all the relevant documents to the undersigned advocate who prepared the written statement to be filed on behalf of the opponent. On 04/10/2023 this Court has been pleased to pass an order of “no ws” against this opponent. The delay caused to file the ws is neither intentional nor deliberate. No harm and prejudice would be caused to the disputant if the delay is condoned and opponent is permitted to file written statement on record. Hence prayed to set aside “no written statement” order passed against the opponent and allow and permit this opponent to file his written statement being tendered herewith on record of the present proceeding in the interest of justice.

2. The say of disputant is called. The disputant has filed say on the application itself and stated that the present application is bad in law. It is the practice of delay tactics. Hence strongly objected and allow with heavy cost. Therefore prayed to pass necessary order.

3. After hearing both the parties and perusing the documents on record following points arise for my consideration.

Sr. No.	Points	Findings
1	Whether the application is entitled to be allowed ?	In the affirmative
2	What order ?	As per final order

REASONS**AS TO POINTS NO. 1 AND 2**

4. Perused application, proceeding, say on record and after hearing of the parties it appears that the opponent appeared before this Court on 20/06/2023. The opponent have filed application to get documents of the dispute. The disputant provided documents to the opponent on 03/07/2023. On 04/10/2023 this Court has been pleased to pass “no written statement” order against the opponent. Thereafter on very next date on 01/11/2023 the opponent filed present application along with written statement on record. According to opponent, Mr. Prabhakar Ramchandra Chavan had collected the compilation of the present dispute with a view to engaging a advocate to represent himself as well as this opponent in the present proceedings. However before Mr. Prabhakar Chavan could supply the requisite documents to the advocate he suffered with serious spine injury and underwent a critical surgery to his spine and as such was bed ridden for long time. In view of the aforesaid the undersigned advocate could not prepare the written statement within time. The opponent has filed medical certificate of Mr. Prabhakar Chavan on record. The opponent has filed medical certificate on record. If the application is not allowed irreparable loss will be caused to the opponent. Per contra if the application is allowed, no harm will be caused to the disputant. In this background in the interest of justice and to decide the case on merits it is legal and proper to pass the following order.

Order

1. Application at Exh. 11 is allowed.

2. The “no written statement” order dated 04/10/2023 passed against opponent is hereby set aside.
3. No order as to cost.

Sd/-

Place : Thane

Date : 01 / 11 / 2023

(Smt. S. K. Tonpe)
Judge
Co-operative Court, Thane