

**ORDER BELOW EXH. NO. 24**

This application is filed by the defendant no 1, 2, 5, 6 & 11 for setting aside the “No W.S. and Say” order passed below Exh.1 dated 06/05/2022.

02. The defendant applied on the ground that, due to non-availability of old entries of suit land as well as relevant documents, he could not be approached in court and filed a written statement in court. Consequently, she failed to file a written statement and say within the time stipulated by law. But she wants to contest the suit.

03. Plaintiff has resisted the application on the ground that the defendant is intentionally prolonging the matter, a sufficient opportunity has been given to the defendant to file their WS on record, with no proper reasons, and there is no justifiable reason to allow him to file a written statement at as such belated stage and reject the application with a heavy cost.

04. Heard Ld. Advocates of both parties.

05. The points for determination along with my findings thereon are as follows.

Sr . No	Points	Findings
1	Whether there is sufficient cause for the defendant not to file the written statement within the prescribed time?	Yes
2	What Order?	Application is allowed

REASONS

As to point No. 1

06. The suit is for perpetual injunction against the all concerning land gut no 492/1 situated at Kavathe Tal. Sakri, Dist. Dhule. Therefore, a liberal view has to be taken while considering this application. The reason assigned appears to be satisfactory as the defendant no 1, 2, 5, 6 & 11 is not filed their say and written statements due to non-availability of relevant entries and documents, this reasons as they could not be filed a written statement and say within a stipulated period, therefore, the present application is filed on record. Considering these reasons, it was not possible to file a written statement. The ground above mentioned raised by the defendant no 1 is supported by his Affidavit filed at Exh 25.

07. As regards to the mandatory period for filing W.S., it is settled that provisions of Order 8, Rule 1 are directory in nature and not mandatory. The suit is regarding the perpetual injunction of the suit land and present defendant having the right and interest in the suit properties. Therefore, to decide the controversy in hand on merits and in order to have full & final adjudication of the party's rights. In my humble and considered opinion, the application deserves to be allowed. At the same time, the strong resistance of the plaintiff cannot be straightly brushed aside. Accordingly, I hold imposing a certain cost on the defendant for setting aside no written statement order would meet the ends of justice. Hence, point no. 1 is answered in the affirmative, and in response to point no 2. I proceed to pass the following order.

ORDER

1. The application is allowed subject to payment of the cost of Rs 500/- to be paid by the defendant no 1, 2, 5, 6 & 11 collectively to the plaintiff on or before the next date failing which the application shall automatically be stand rejected without further reference.
2. The order passed dated 06/05/2022 below Exh 1 is hereby set aside.
3. Written statement and say filed by the defendant no 1, 2, 5, 6 & 11 be taken on record after payment of costs.

Date: 16/10/2023

(Nilesh L. Patil)

Place: Sakri, Dhule

2nd Jt Civil Judge J.D. Sakri