

**ORDER PASSED BELOW EXH. 12 IN RCS No. 72/2019**

The present application is filed by the defendant with prayer to set a side no written statement order passed dated 09.01.2020.

2. Read the application and perused the say filed by plaintiff. Heard both the sides.

3. Perused record. It appears from record that, Vide exhibit 5 suit summons was duly served on defendant on 19.09.2019 but he has appeared before the court through his advocate on 01.10.2019. Subsequently even after sufficient opportunities he failed to file his written statement within stipulated period. Therefore, he has filed present application for seeking permission to file his written statement However, he has assigned reason for non filing of written statement within stipulated period due to his illness and nationwide Covid-pandemic he went to Pune for residing with his son. Hence, he could not file written statement. Lastly, prayed to set a side the no written statement order and permit him to file written statement on record.

4. Plaintiff has strongly objected the present application by filing say that, present application does not disclosed proper reason. Defendant has appeared in the suit 01.10.2019, there is two years delay in filing written statement on record. Just to delayed the case he has not

filed written statement within time. Hence, plaintiff strongly objected, if allowed heavy cost be imposed on defendant or passed any other order in the interest of justice in favor of him.

5. Admittedly written statement of defendant will help to adjudicate the dispute on merits. Moreover, it is always desirable that every matter should be decided on its own merit. At the same time delay in filing of written statement cannot be ignored. On perused of the record, it appears that the court has passed no written statement order on 09.01.2020. Considering the nature of dispute, I am of the view that the opportunity to defend the case is required to be given to defendant. In circumstance, no prejudice will be cost to the plaintiff. On the contrary it would facilitate to the court to adjudicate dispute between the parties on merit. So far as the delay is concerned, that can be compensated by imposing certain cost. Accordingly, I pass the following order.

### **ORDER**

1. The application is hereby allowed.
2. The Order passed dated 09.01.2020 of no written statement of the defendant is hereby set a aside subject to cost of Rs.100/-.

3. Above mentioned costs shall be paid to the plaintiff today itself.
4. On payment of said cost written statement of the defendant be taken on record.

Shirpur.  
Date :- 18.10.2022

( Mayur Y. Rane )  
Civil Judge Junior Division,  
Shirpur.