

CNR NO. MHGA090002022022



IN THE COURT OF JOINT CIVIL JUDGE (JUNIOR DIVISION), CHAMORSHI
(Presided Over by Diksha D. Vighne)

Regular Civil Suit No. 06/2022

Shri. Homdeo Raghunath Gawhare
Age :- 75 years, Occ.:- Agriculture,
R/o. Ward no.3, Chamorshi
Tq.-Chamorshi, Dist.-Gadchiroli.

----- **Plaintiff**

-Versus-

1. Ramdas Raghunath Gawhare,
Age :- 55 years, Occ.:- Agriculture,
2. Jivandas Raghunath Gawhare,
Age :- 50 years, Occ.:- Agriculture,
Both R/o. Ward no. 3 Chamorshi,
Tq.-Chamorshi, Dist.-Gadchiroli.

----- **Defendants**

Appearance:- Advocate for Plaintiff :- Smt. M. K. Atmande
Advocate for Defendants :- Shri. V. G. Chilange

Order Below Exh.33

(Passed on 01/07/2023)

This is an application filed by defendants for setting aside no written statement order passed below Exh. no. 01 on 18-01-2023 and grant of permission to file written statement on record.

2. Defendants have stated in this application that this is a suit for declaration of cancellation of relinquishment deed and permanent prohibitory injunction. After receiving summons defendants have appeared in the case through their advocate. But, due to unavailability of necessary documents defendant no.1 and 2 have failed to file their written statement

within limitation. Hence, on 18-01-2023 no written statement order was passed against defendant no.1 and 2. In this case, defendants have not deliberately cause delay but due to aforesaid reasons the delay has caused to file written statement. If the permission has not granted to defendants for filing their written statement then it will cause prejudice to their case and will result into irreparable loss. On contrary, if permission is granted then it will not cause any prejudice to the defendants. Therefore, in the interest of justice he has prayed for setting aside no written statement order and grant of permission to file written statement on record.

3. The learned advocate for plaintiff has filed his say on the back-leaf of the application and strongly opposed this application. It is stated and submitted that the defendants were served summons on 16-03-2022. Defendants failed to file their written statement within prescribed time as per C.P.C. The defendants and their counsel were present on each and every fixed date of case before this court. The reason mentioned in application to not filing written statement within time is not lawful and sufficient. It suffers plaintiff hardship badly. Therefore she has prayed for rejection of application and if allow with heavy cost.

4. Perused application and say thereon. Heard both parties and their advocates. On perusal of record it is seen that summons were served on defendants on 16-03-2022. Despite present before court they did not filed their written statement within 30 days. Therefore, no written statement order was passed on 18-01-2023 at Exh. No.1. According to defendants, they had not receive important documents regarding this suit therefore they were unable to file their written statement within time. On perusal of record it is seen that the earlier advocate of defendants had filed reply to the temporary injunction application. But, failed to file written statement of this case. It is settled principle that due to act of advocate the litigant should not get suffer. Thus, in this case due to non filing of written statement by earlier advocate of

defendants should not cause prejudice to the defendants. As well as, the Hon'ble Supreme and High Court have reiterated in its various judgment that the delay for filing written statement shall be liberally construed. Thus, I find that the defendants have sufficient cause for setting aside no written statement order. Grant of permission will not cause any prejudice to plaintiff. As well as, the defendants have filed their written statement alongwith this application. It shows their bonafide intention to contest this case. Moreover, it is also beneficial for both the parties to decide the case on merits. Therefore, for proper adjudication of dispute the order of no written statement required to be set aside and permission is required to granted for filing written statement of defendants on record. Therefore, the permission to file written statement can be allowed subject to cost. Considering aforesaid reasons I pass following order.

ORDER

1. Application is allowed subject to cost of Rs. 300/- payable to plaintiff. Cost is a condition precedent.
2. Order of no written statement passed on 18-01-2023 below Exh. 01 is set aside.
3. Permission has been granted to defendants to file their written statement on record.

Date: 01.07.2023

(Diksha D. Vighne)
Jt. Civil Judge (Jr. Dn.),
Chamorshi.