

CNR NO. MHGA090009502021



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

Regular Civil Suit No. 36/2021

Sau. Kavita Sudhakar Yelkuchiwar ----- **Plaintiff**

-Versus-

Smt. Anusaya Bapu Dandkewar +3 ----- **Defendants**

Appearance:-

Advocate for Plaintiff :- Smt. M. K. Atmande

Advocate for Defendants :- Shri. D. G. Undirwade

Order Below Exh No. 22

(Passed on 14/12/2022)

This is an application for setting aside no written statement order passed against defendant no.2 at below Exh. no. 01 on 18-02-2022 and grant of permission to file his written statement on record.

2. Defendant no. 2 has submitted that after service of summons he had to file his written statement within 30 days. But he has failed to do so therefore no Written statement order was passed against him. He has stated that the delay was not deliberate. During that period he was admitted in Zep De-addiction Center Chandrapur for 35 days. Therefore, he was unable to file his written statement. He has further stated that if the permission is not granted then he will suffer irreparable loss which cannot be compensated in terms of money. On contrary, plaintiff will not suffer any loss if permission is granted. Hence, in the interest of justice he has prayed

for setting aside no written statement order and permission to grant written statement on record.

3. On the other hand, learned advocate for plaintiff has filed her say at the backleaf of the application and opposed this application. She has stated that the present application is not supported by any documents. Therefore, it cannot be presume that the reason mention in the application is true. Defendants are deliberately filing such false and frivolous application to remain absent and to kill valuable time of the court. Therefore, she has prayed for rejection of this application or if allow shall be with heavy cost.

4. Perused application and say thereon. Heard learned advocate for plaintiff. Learned advocate for defendant has failed to do complete hearing on this application. Therefore, the contents of this application alongwith part hearing are taken into consideration while deciding this application. On perusal of record it is seen that summons was served on defendant no. 2 on 01-12-2021. He was appeared before court on 18-12-2021. Thereafter, from the date of service of summons he has to file his written statement within 30 days. But he was failed to do so. Therefore, no written statement order was passed against him on 18-02-2022 at Exh. 01. Apparently it is seen that, the present application has filed after 08 months of passing order.

5. The reason stated by the defendant no.2 that he was admitted in De-addiction Center at Chandrapur. Therefore, he was unable to file his written statement till filing of this application. But this contention of defendant no.2 is not supported by any documentary evidence. As well as, apparently there is total delay of around 08 months. If this reason of 35 days is considered then also no reason has stated by defendant no.2 for remaining delay. But the present suit is for partition and separate possession. In this suit the plaintiff and defendants are at the same

footings. If permission is granted to file written statement by setting aside no written statement order then the case will be decided on merits by adjudicating all question in dispute. The present application is filed alongwith written statement. It shows bonafide intention of defendant no.2 to proceed the case on merits. Thus, even though there is delay of filing this application, I find that the opportunity should be granted of being heard subject to cost to the defendant no.2. Thus, in the result I pass following order.

ORDER

1. Application is allowed subject to cost of Rs. 300/- payable to plaintiff by defendant no.2.
2. The order of no written statement passed against defendant no.2 on 18-02-2022 is set aside.
3. Permission is granted to defendant no.2 to file his written statement on record.
4. Cost is a condition precedent.

Date: 14.12.2022

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