

ORDER BELOW EXH.20
(Passed on 30th November, 2020)

1. This is an application filed by the defendant for setting aside without written statement order and without say order passed below Exh. 1 and Exh. 5 dated 08.10.2020 respectively with permission to file the written statement and say to the temporary injunction application.

2. It is the contentions of the defendant that he is an old age person and also suffering from diseases. The defendant further contented that a copy of plaint was not supplied to him, therefore, he could not file written statement and reply to the temporary injunction application within a stipulated time. Therefore, the defendant filed this application for setting aside without written statement order and no say order of temporary injunction application below Exh. 1 and 5 of dated 08.10.2020 with permission to file written statement and say to the temporary injunction application.

3. The plaintiff filed her say on the present application and strongly opposed the application. The plaintiff submitted that suit summons and notice has been served on the defendant on 16.07.2020. The plaintiff further submitted that on 22.07.2020 the defendant appeared before this court through his advocate. The plaintiff further submitted that an adjournment application filed by the defendant below Exh. 16, 17 and 18 for seeking a time to file a written statement and reply was allowed. The plaintiff

further submitted that the defendant also filed an adjournment application below Exh. 19, accordingly said application was rejected. The plaintiff further submitted that the defendant intentionally delay the present suit. The plaintiff further submitted that the defendant intentionally filed the present application after the expiry of stipulated period for filing written statement. Hence, prayed for rejection of the present application with heavy costs.

4. Heard learned advocate Mr. S. K. Bawariya for the defendant and also learned advocate Mr. B. T. Maskare for the plaintiff.

5. Perused the record. After perusal of record it appears that the plaintiff filed the present suit against the defendant for declaration and perpetual injunction. After perusal of present application it appears that it is the contentions of the defendant that due to the old age he is suffering from diseases, therefore, he could not filed written statement and reply to the temporary injunction application within stipulated period. Perused the record and annexed documents. After perusal of record it appears that suit summons and notice for temporary injunction application was served on the defendant vide Exh. 11 and 12 respectively on 17.07.2020. After perusal of record it also appears that the defendant filed an adjournment applications below Exh. 15 to 18 and sought time for filing written statement and reply to the temporary injunction application. Accordingly,

adjournment applications below Exh. 15 to 18 were allowed. Later on, on 08.10.2020 the defendant filed an adjournment application below Exh. 19 and sought time for filing written statement and reply to the temporary injunction application. Accordingly, said adjournment application was rejected.

6. In the present application the defendant averred that he could not file written statement and reply to the temporary injunction application within stipulated time due to old age and diseases. After perusal of record it appears that the defendant could not file on record medical papers and medical certificate from which it can be traced out that health of the defendant was not good. Therefore, said grounds mentioned in the present application by the defendant is not a proper and genuine. Moreover, the present suit is relating to the immovable property. If the application is allowed no prejudice will be caused to the plaintiff. Per contra it will avoid the multiplicity of the proceeding. For fair trial it is necessary to give an opportunity to the defendant to defend the suit. If an opportunity is not given to the defendant it will cause hardship to him. However, delay caused by the defendant for filing written statement and reply to temporary injunction application can be compensatory by imposing costs on the defendant. So in the interest of justice, I proceed to pass the following order.

ORDER

- 1) The application is allowed with costs.
- 2) Without written statement order passed below Exh. 1

and no say order passed on temporary injunction application below Exh. 5 dated 08.10.2020 is hereby set aside.

- 3) The defendant is permitted to file his written statement and say to temporary injunction application below Exh. 5 subject to payment of costs of rupees 1000/- (One Thousand Only) to the plaintiff.
- 4) If the defendant is failed to comply the present order on or before next date then the present order is automatically set aside.

Date : 30-11-2020

Sheaikh Wasim Akram
Civil Judge Junior Division,
Deori.