


MHJN060004382023 	<u>Reg. Civil Suit No.62/2023</u> <u>Hajarabee -V/s- Rahimunissa & Ors.</u>
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ORDER BELOW EXH.15

1. This application is filed by Defendant No.1,3, 5 to 11 for setting aside “No Written Statement” order passed against them.
2. Perused application, say of Plaintiff and record. It is contended by the Defendants that, delay caused to file written statement because sickness of Defendant No.01 and due to lack of some important documents and information. Hence, they have failed to file their written statement within stipulated period. They further submitted that, delay not caused by Defendants intentionally. They further submitted that, if the order of no written statement is set aside, then, no loss cause to Plaintiffs, but if the application is rejected then, the Defendants will suffer heavy loss. Hence, they prayed that in the interest of justice, no written statement order passed against them be kindly set aside.
3. Per contra, Plaintiffs have filed their say below this application and strongly resisted the application. Plaintiff contended in their say that, no written statement order were passed against Defendants. There is no sufficient reason mentioned by Defendants for the delay caused for filing their written statement. So, they prayed for rejection this application.
4. Perused application, say and record. Heard Ld. Advocate for Defendants and Plaintiff for sufficient time. Admittedly Defendants have not filed their written statement within stipulated time i.e. within 90 days from date of service of summons to them. Hence, automatically order of no written statement is passed against them. Present suit is filed by Plaintiffs for perpetual injunction. It is settled principal of law that rules and procedure have handmade to the administration of justice. If opportunity to put forth defense is not

afforded to the Defendants, then grate prejudice would cause to the Defendants. Per contra, there is no any prejudice or harm cause to the Plaintiffs. In **R.N. Jadi & Brothers and others v/s Subhaschandra, reported in (2007) 6 SCC 420,** wherein Hon'ble Apex Court held that,

Order 8 Rule 1 and proviso thereto are directory and not mandatory in nature and it do not take away the powers of the court to take written statement on record though file beyond 90 days. Proviso of Order 8 Rule 1 only cast an obligation on Defendant to file written statement within time. The time scheduled contemplated by Order 8 Rule 1 shall be the Rule and departure there from an exception, made for satisfactory reasons only.

5. So, in my view in the interest of justice and for the importance of final decision of this matter on merit said application is deserves to be allowed. Resultantly, I proceed to pass following order -

ORDER

a.	Application is allowed.
b.	No written statement order passed against Defendant No.01,03, 05 to 11 are set aside subject to cost of ₹1,500/- (Rs. One Thousand Five Hundred Only).
c.	Cost of ₹1,500/- (Rs. One Thousand Five Hundred Only) shall be paid to the Plaintiff on or before next date.

Date: 05/08/2024.
Place: Bhokardan.

(C. S. Deshpande)
Jt. C.J.J.D, Bhokardan.