

MHJN060004572022



Reg. Civil Suit No. 100/2022

Moh. Rafiq v/s Sk. Najir

Passed On 20/04/2023

ORDER BELOW EXH.28

1. This application is filed by Original Plaintiff No. 1 to 5 for setting aside “No Written Statement” order passed against them.
2. Perused application, say of Plaintiff and record. It is contended by the Original Plaintiff No. 1 to 5 that, due to lack of some documents they have failed to file their written statement within stipulated period. They further submitted that, delay not caused by Original Plaintiff No. 1 to 5 intentionally. They further submitted that, if the order of no written statement is set aside, then, no loss cause to Counter Claimant, but if the application is rejected then, the Original Plaintiff No. 1 to 5 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, Counter Claimant has filed his say below this application and strongly resisted the application. Counter Claimant contended in his say that, there is no sufficient reason mentioned by Original Plaintiff No. 1 to 5 for the delay caused for

filing their written statement. So, he prayed for rejection this application.

4. Perused application, say and record. Heard Ld. Advocate for Original Plaintiff No. 1 to 5 and Counter Claimant for sufficient time. Admittedly Original Plaintiff No. 1 to 5 have not filed his written statement within stipulated time i.e. within 90 days from order of court. Hence, automatically order of no written statement is passed against them. Present Counter Claim is filed by Counter Claimant for possession. 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 Plaintiff. 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 No.01 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. In present matter reasons mentioned by Original Plaintiff No. 1 to 5 for delay is justifiable. Counter Claimant has sought relief of possession against Original Plaintiff No. 1 to 5. Hence, to decide matter on merit, opportunity must be given to Original Plaintiff No. 1 to 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 by imposing some cost on Original Plaintiff No. 1 to 5 for delay. Resultantly, I proceed to pass following order -

ORDER

- a. Application is allowed.
- b. No written statement order passed against Original Plaintiff No. 1 to 5 is set aside subject to cost of ₹200/- (Rs. Two Hundred Only).
- c. Cost of ₹200/- (Rs. Two Hundred Only) shall be paid to the Counter Claimant on or before next date.

Date: 20/04/2023.

Place: Bhokardan.

(C. S. Deshpande)

Jt. C.J.J.D, Bhokardan.