



ORDER BELOW EXH. 19 IN R.C.S. NO. 498/2022

**Dhananjay Alias Prajyot Pratapgonda Patil and ors. v/s.
Prakash Aapgonda Patil and ors.**

CNR No. MHKO050050162022

This is an application for setting aside No W.S order passed against the defendant. Perused the application and reply thereon. Heard learned counsel for both sides.

2. Lr.s of deceased defendant seeking set-aside no written statement order passed against them on the ground that defendant no. 1 has been operation of enjioplasti at Bharati Hospital, Sangli-Miraj road, Sangli, defendant no. 3 is living at Mumbai and defendant no. 3 has having blood pressure and diabetic. Due to which he will not able to collect the information regarding suit they could not file their written statement within the prescribed period of limitation. Application is resisted by the plaintiff on the ground that reasons mentioned in the application are not sufficient to set-aside the no written statement order passed against the defendant. Defendants have not filed written statement only prolong the matter. Hence, it is prayed to reject the application.

3. Perusal of record reveals that defendant appeared in the matter on 20.01.2023. Thereafter, on several times they took adjournments to file their written statement. But, inspite of grant of ample opportunities to them they failed to do so. Hence, on 17.04.2023 no written statement order was passed against them.

4. Record reveals that defendant have filed present application was filed on 02.05.2023. They are ready to file their written statement and contest the suit. Moreover, no one should be condemn unheard is the

basic principle of the natural justice. In these circumstances, considering the reason mentioned in the application and the principles of natural justice, the defendant cannot be stifled and their right of defence by filing written statement, cannot be crippled especially when the plaintiff can be compensated by way of costs for causing delay to the present matter. Hence, considering the above mentioned facts and circumstances of the case it will be just and proper to grant an opportunity to the defendants to contest the matter by filing their written statement subject to imposing the proper costs for causing delay. Hence, I pass the following order:

ORDER

1. Application at Exh. 19 is hereby allowed subject to cost of Rs. 1,000/- payable to the plaintiff.
2. No written statement order passed at Exh.1 is hereby set-aside subject to compliance of the above said order.

Ichalkaranji.
Date :- 04.05.2023.

(S. S. Pednekar)
6th Jt. Civil Judge, Junior Division,
Ichalkaranji