



Order Below Exh. 48 In RCS No. 141/2018

CNR No. :- MHKO110011512018

Passed On 20/01/2025

1. The defendant No.5 and 6 have filed this application for set aside no written statement order.
2. It is the contention in the application that, the plaintiff have filed this suit for removal of encroachment in which the plaintiff carried out measurement from TILR. The said measurement report is also filed on record. The said report shows that defendant No.1 to 6 made encroachment over the suit property to the extent of 7 R. Further, as per the measurement report 1.5 R land of the defendant No.5 and 6 is filling less. Further, 10 R land of the defendant is at is. Now, It become a necessary to defendant No.5 to made RCC construction over the property owned by him.
3. After service of summons and notices the defendant were not appeared. Further, the defendant also not saw the measurement report. Rather, the defendant have no knowledge above the map and measurement. The plaintiff have filed Civil M.A. No.23/2000. In which the plaintiff have filed application for Police aid. However, defendants are illiterate and having no knowledge of law. The above mentioned history of this suit he is recently get to the knowledge of defendants. The defendant have right to file WS and defend the suit. Accordingly, prayed for allow this application and sought permission to file WS.
4. Plaintiff has filed his say and thereby strongly oppose the instant application on the grounds that, inspite of service of summons and notices defendant failed to appeared. Further, ex parte order was also passed against the defendants. Further, on 30/05/2019 injunction order was also passed against the defendant. Furthermore on 13/04/2022

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measurement of the suit property was also carried out and measurement report also filed on record. Defendant are in moved to made construction over the encroachment area. Hence, the plaintiff filed Civil M.A. No.23/2020 in spite of that defendant failed to file their WS. Therewere delay of 6 Years 3 Months. The defendant failed to mention the reason for non filing of WS. Accordingly, prayed for rejection of this application with cost and if the application is allowed heavy cost be imposed upon the defendant.

5. Perused the application, say and record of the case. Heard both the sides. I have given concise consideration to the submission made by both the parties across the bar. No doubt to say that, though reasons mentioned in the application are vague. Rather no reason mentioned for delay. Apparently, reason for delay is illiteracy. However, considering the nature of suit as the civil rights of the party is involve in this matter. Therefore, in my opinion to decide the matter on merit and in the interest of justice it is necessary to hear the both sides. Further, considering the object and purpose behind enacting Rule 1 of Order 8 of The Code of Civil Procedure as amended by Act 22 of 2002 the provision has to be construed as directory and not mandatory. Further, to avoid grave injustice to the defendants, they shall be permitted to file their written statement and say even after expiry of stipulated period. However, negligence on the part of the defendants cannot be overlooked. It can be compensated by imposing cost on them. Hence, I pass following order.

ORDER

1. Application below Exh.48 is allowed and No W.S and say order is set aside. The written statement filed by the defendants be read & recorded on payment of cost of ₹1000/- to

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defendant No.5 and 6 to be paid to the plaintiff on
or before next date.

Date : 20/01/2025
Peth-Vadgaon.

(S. D. Sonawane)
Jt. Civil Judge Junior Division,
Peth-Vadgaon.