


MHKO160004402017 	<u>Order below Exh.67 in R.C.S.No.85/2017</u>
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1. The defendant No.1 has filed this application for condonation of delay for setting-aside no W.S. order passed against him. According to defendant No.1, he has appeared in this suit but he has not filed his written statement, and, no W.S. order is passed against him. He submitted that he is a farmer by profession and due lack of legal knowledge and unavailability of necessary documents, he could not visit to their learned advocate and could not file his W.S. within time. He further submitted that the delay of seven years has been occurred and it is not intentional. He submitted that if the delay is not condoned, then he will suffer irreparable loss. Hence, he pray to condone the delay and set-aside no W.S. and say order passed against him.

2. plaintiff has given his say at Exh.68 to this application. plaintiff stated that the application is false and bogus. Plaintiff submitted that he filed the suit against defendants on 28/07/2017. After appearance of defendant Nos. 1 to 6, they have filed their say after obtaining all documents of the suit. But, defendants have purposefully not filed their written statement to this suit. Defendants have submitted an application Exh.26 under O.7 R.11 of C.P.C. for

rejection of plaint, but, the said application is rejected on merit. Plaintiff has also filed chief affidavit of his P.O.A. holder Shankar Dnyanu Dalavi and affidavits of his witness namely Maruti Dnyanu Dalavi and Pandurang Vithu Dalavi. Defendants have not cross-examined plaintiff and his witnesses and No Say order is passed against them. Defendants have not filed their written statement since 15/09/2017 and, delay of 2693 days occurred. On 24/10/2022, original plaintiff has died and, after due procedure of law, legal heirs of plaintiff have been taken on record. Defendants have not given any specific reason for their delay.

3. Plaintiff has relied on following citations and prayed that the application may kindly be rejected by relying on following citations.

- 1) Ralmal Vs. Rewa Coal Fields Ltd 1962 (2) SCR & M.R.1962 SC 361.
- 2) Banwarilal & Sons Vs. Union of India AIR 1975 DEL 24 DB
- 3) Rama Dubey Vs. Deputy Director of consolidation AIR 1995 SC 1010.
- 4) Laxman Diwellar Vs. State of Maharashtra AIR 1998 Bom.176.

4. Heard learned advocates of both the parties, perused all the documents. It is submitted by defendant No.1 that he is a farmer by profession and due lack of legal knowledge and unavailability of

necessary documents, he could not visit to their learned advocate and could not file W.S. within time, and, delay of seven years has been occurred. Defendant submitted that the delay not intentional and if it is not condoned, then he will suffer irreparable loss. On the other side, plaintiff submitted that defendants have filed their say but purposefully they have not filed their written statement to this suit to prolong the case. Plaintiff stated that the application is false and bogus and reasons given in the application are unjustifiable. Plaintiff submitted that he has also filed chief affidavit of his P.O.A. holder and affidavits of his witnesses, but, defendants have not cross-examined them and No Say order is passed against them. After hearing both the parties it is seen that delay of about seven years has been occurred and it will not be appropriate to discard the right of defendants to defend the suit at this stage. Moreover, in order to determine dispute between the parties, it is important to hear defendants. Plaintiff has relied on above citations, but, the facts of these citations and facts of this suit are different. Therefore, it is very important and reasonable to give a fair opportunity to defendants to defend their case. At the same time, the huge delay has been caused by the defendant No.1 needs to be taken in to account. The defendant No.1 have caused huge delay, therefore, the delay needs to be compensated. No prejudice will caused to the plaintiff if this application is allowed. The W.S.of the defendant is important to decide this suit on merit. All the disputes between both the parties needs to be decided on merit. Considering all the facts, this court finds to grant this application. Hence, following order -

ORDER

1. Application Exh.67 is hereby allowed.
2. The delay caused to file W.S. of defendant No.1 is hereby condoned and No W.S. order passed against him is hereby set-aside subject to cost of Rs.7,000/- to the plaintiff till next date.
3. After payment of the cost, the W.S. of defendant No.1 will be read and recorded.

Place : Shahuwadi.

(Shraddha Dinkar Bagal)

Date : 08.07.2024.

Jt. Civil Judge Junior Division,

Malkapur-Shahuwadi