

**ORDER BELOW EXH.81 IN REG.CIVIL SUIT NO.50/2015.**

By this application, defendant nos.1 to 3 have prayed for setting aside 'no say' order passed against them in respect of counter claim of defendant nos.8 to 11.

2] As per the application, defendant nos.1 and 2 are resident of Radhanagari and defendant no.3 is resident of Porle turfe Thane, Tal. Panhala. Defendant nos.1 and 2 are agriculturists and defendant no.3 is working in the factory and he was temporarily removed from the work due to drought situation. So also, he had to go out of station, due to the transportation work, due to which he had not given necessary information to his advocate for filing written statement, due to which, there is delay for filing to the say to the counter claim of defendant nos. 8 to 11. So defendant nos.1 to 3 have prayed for permission to file their say/written statement to the counter claim of defendant nos.8 to 11.

3] Plaintiff has opposed the application by filing say. As per the say of the plaintiff, application is false and defendant nos.1 to 3 have not filed on record documents in support of the delay and defendants have intentionally prolonged the matter. So plaintiff has prayed for rejection of the application. Say of defendant nos.8 to 11 was called. Defendant nos.8 to 11 have filed their say and opposed the application. As per the say of defendant nos.8 to 11, application is false and illegal and the reasons mentioned in this application are false. Defendants have intentionally made the delay and so defendant nos.8 to 11 have prayed for rejection of the application and in the alternative, they have prayed for costs of Rs.5,000/-, if the application came to be allowed.

4] Heard both the sides and perused the record. Perusal of record shows that plaintiff has filed this suit for declaration and perpetual injunction

in respect of the house property bearing grampanchayat property no.352 of the village Guruwar Peth, Tal. Panhala. Defendant nos.8 to 11 have filed their written statement and counter claim against plaintiff and defendant nos.1 to 7 vide Exh.66 on 09/10/2015. Say of plaintiff and defendant nos.1 to 7 was called to counter claim of defendant nos.8 to 11. Defendant no.7 and plaintiff have filed their written statement and say to the counter claim of defendant nos.8 to 11 vide Exh.77 and 78. However, in spite of opportunity, defendant nos.1 to 6 have not filed their say.

5] Perusal of record shows that by way of counter claim, defendant nos.8 to 11 have prayed for relief of declaration of ownership in respect of suit property against plaintiff and defendant nos.1 to 7 and declaration regarding the sale deed executed by defendant nos.1 to 3 in favour of defendant no.7 as null and void and not binding on defendant nos.8 to 11 and perpetual injunction as not to cause any obstruction to their possession and not to dispose of the suit property. The suit and counter claim are in respect of the suit house property. So in such circumstances, considering the reasons mentioned in this application regarding the delay and inability of the defendant nos.1 to 3 to file their say within time and the nature of dispute between the parties, which is in respect of declaration of ownership and perpetual injunction, it appears to my mind that for decision of counter claim on merits, an opportunity of filing say to the said counter claim is necessary to give to defendant nos.1 to 3. Further, if opportunity of filing say to the counter claim is given to defendant nos.1 to 3, then it will not cause any loss to defendant nos.8 to 11, however, opportunity of filing written statement to defendant nos.1 to 3 if granted, then it will be helpful for decision of the dispute between the parties on merits. Hence, in the light of above discussion, I proceed to pass the following order:-

**:- ORDER :-**

1. Application is allowed.

2. Defendant nos.1 to 3 are hereby permitted to file their say/  
written statement to counter claim subject to payment of costs of  
Rs.700/-(Rupees seven hundred only), payable to defendant  
nos.8 to 11 (plaintiffs in counter claim vide Exh.66).

Date :- 27-04-2017.

Sd/-  
(V.A.Awaghade)  
Jt. Civil Judge Junior Division,  
Panhala

-: **CERTIFICATE** :-

I affirm that the contents of the P.D.F. file order are same, word to  
word, as per the original Order.

Name of the Stenographer	Shri. A.A.Patil
Name of Court	Shri. V.A.Awaghade
Date of Dictation	27-04-2017
Order signed by the P.O. on	28-04-2017
Order uploaded on	28-04-2017