


MHKO170003352013 	Regular Civil Suit No. 92/2013 Shahu Kikutpalan V/s. Bhimrao Chougale
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Order Below Exh.40.

- 1] The defendant no.1 to 5, 27 and 28 have filed instant application for setting aside 'no written statement' order dated 11/02/2014 below Exh.1 and thereby prayed for grant of permission to file their written statement, on record.

- 2] By this application, the defendant no.1 to 5, 27 and 28 have stated that, present defendants were absent on the particular day due to unavoidable circumstances. It is difficult for them to collect necessary information, documents and furnished them to concerned lawyer within time, due to which written statement is not filed within time. If the present application is allowed then in that event no loss or prejudice will be caused to the plaintiff and the same will be helpful to decide the matter on merit. But if the application is not allowed then in that event heavy irreparable loss will be caused to the defendant no.1 to 5, 27 and 28. Therefore, to avoid the multiplicity of proceedings, prayed to allow the application. The instant application is supported by affidavit.

- 3] The plaintiff has opposed to the present application by filing his say on the ground that, the contents of the application are false. There is no specific reason for causing delay. The defendants deliberately prolonging the matter. Hence, prayed to reject the application with heavy cost.

- 4] I have heard the learned advocate of both the parties at length.

- 5] Order 8 Rule 1 of the C.P.C. provided that, where the defendant fails to file W.S. within the period of 30 days, he shall be allowed to file W.S. on such other day as may be specified by the Court but shall not be later than 120 days from the date of service of summons. Order 8 Rule 1 being procedural and since

procedure is handmaid of justice, a strict interpretation would defeat justice. The above-mentioned provisions does not deal with the power of the Court and also does not specifically take away the power of the Court to take the W.S. on record though filed beyond the time as provided for.

6] on perusal of the record, it transpires that after service of suit summons the defendant no.1 to 5, 27 and 28 are appeared in the court but failed to file written statement. Thereafter, sufficient opportunities were given to them to file their written statement on record. However, the defendant no.1 to 5, 27 and 28 have stated on affidavit that due to unavoidable circumstances, they failed to file their written statement within stipulated time. Thus, considering the reasons stated in the application and for proper adjudication of the matter, I am of the considered view that an opportunity to contest the instant suit needs to be given to the defendant no.1 to 5, 27 and 28, in the interest of justice. Hence, I proceed to pass the following order;

ORDER

- 1] Application below Exh.40 is allowed subject to cost of Rs.2000/- payable by defendant no.1 to 5, 27 and 28 to the plaintiff.
- 2] The defendant no.1 to 5, 27 and 28 are permitted to file their written statement on record after payment of cost.

Panhala.

(Prerana R. Nikam)

Date : 16/03/2021

Jt. Civil Judge Junior Division, Panhala.