

ORDER BELOW EXH.43 IN REG.CIVIL SUIT NO.94/2011

(Kashinath Yashwant Jadhav & Ors. Vs. Bajirao Govind Jadhav & Ors.)

01) By this application, defendant no.1-A to 1-D have prayed for setting aside 'no written statement' order passed against them.

02) As per the application, defendant no.1 Indubai is old age and she was ill and the other defendants were busy in looking after her, so they have not filed their written statement within time, due to which, 'no written statement' order came to be passed against them. Today, these defendants have filed their written statement and if the said written statement, is taken on record, then plaintiff will not suffer any loss, however, it will be helpful for decision of dispute between the parties on merits. So defendant nos.1 A, B, C and D have prayed for setting aside 'no written statement' order passed against them and permission to file on record their statement.

03) Say of plaintiff was called. Plaintiff has filed his say and opposed the application. As per say of the plaintiff, the reasons mentioned in this application, are false. So plaintiff has prayed for rejection of the application and in the alternative, plaintiff has prayed for imposition of costs on defendants, if application came to be allowed.

04) Heard both the sides and perused the record. Perusal of record shows that after the death of defendant no.1, his legal representatives i.e. defendant nos.1-A to 1-D, are brought on record. Thereafter, suit summons served on defendant nos. 1- B, C and D and they appeared, but failed to file their written statements within time, so by passing order below Exh.1 dt.23/10/2018, suit proceeded without their written statement. Record shows that yet suit summon has not served on defendant no.1-A Indubai, who is also prayed for setting aside 'no written statement' order by way of this application.

05] Record shows that 'no written statement' order against defendant nos.1-B, C and D has been passed on 23/10/2018 and thereafter this application is filed. It is submitted on behalf of the defendant nos.1-A, B, C and D that defendant no.1-A Indubai is old age and she was ill, due to which, other defendants were looking after her and so they were unable to file their written statements within time. So considering the above discussed entire facts and circumstances, nature of disputes between the parties, period of delay made by defendant nos.1-B, C and D for filing their written statement and for decision of this suit on merits, it appears to my mind that, an opportunity of filing written statement, is necessary to give to defendant nos.1-A to 1-D. At the same time, defendant nos.1-B, C and D are liable to pay costs to plaintiff for the delay. Hence, I proceed to pass the following order;

-: ORDER :-

1. Application is allowed subject to costs of Rs.300/- payable by defendant nos.1-B, C and D to plaintiff.
2. 'No written statement' order passed against defendant nos.1-B, C and D is hereby set aside and defendant nos.1-A, B, C and D are permitted to file their written statement.

Date :- 19-11-2018.

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	19-11-2018
Order signed by the P.O. on	21-11-2018
Order uploaded on	21-11-2018