

:: 1 ::

Regular Civil Suit No.66/2018  
CNR No.MHKO180001972018  
Order Below Exh.15



## **ORDER BELOW EXH. 15**

- 1) By virtue of this application, defendant no.1 prayed to set-aside “No Written Statement” order passed against him below Exh. 1 on 11/09/2018.
  
- 2) It is submitted by defendant no.1 by way of present application that, suit summons was received by him on 16/4/2018. In pursuant to the suit summons, on 17/04/2018, he appeared in the present suit. Thereafter, his appointed advocate was granted time to file his written statement on record. However, inspite of ample opportunities, his appointed advocate failed to file written statement in the statutory time. Defendant no.1 being an illiterate person is unaware of the legal procedure. Defendant no.1 was unaware that, written statement needs to be filed within 90 days from the receipt of summons. Defendant no.1 when consulted with the present advocate came to know that his written statement is not filed on record. Thus, the non filing of written statement within statutory time is not intentional but due to failure on the part of earlier advocate.

3) It is further submitted that, if written statement of defendant no.1 is taken on record it will assist the court to decide the matter on merit and no harm of what so over nature will cause to plaintiff. On the above reasons, defendant no.1 prayed to take his written statement on record.

4) Plaintiff has filed his say at Exh.16 and resisted the prayer of defendant no.1. Plaintiff submitted that, the reasons mentioned in the application are false. Defendant no.1 and his earlier advocate was remaining present in the Court on each and every date. Thus, defendant no.1 was having knowledge about the proceedings. Defendant no.1 intentionally has not filed his written statement with a sole purpose to prolong the hearing of the suit. On the above reasons, plaintiff prayed for rejection of application.

5) I have heard both the arguments and perused the application and reply thereto as well as various orders passed in the suit. Perusal of record shows that, defendant no.1 appeared on 17/04/2018. Thereafter, time was granted to defendant no.1 as and when requested by him. However, in spite of sufficient opportunities, defendant no. 1 failed to file written statement within statutory limit. On Perusal of record, it transpires that there is delay of 1 year 42 days to file written statement. Defendant no.1 has sought to condone the said delay on the aforesaid reasons.

Defendant no.1 has not filed any documents to corroborate the said reasons. Said reasons are stated on oath.

6) It is worth noticing that, present suit has been filed by plaintiff claiming injunction against the defendants. In my opinion, even though defendant no. 1 was apathetic to conduct the suit by not filing the written statement within statutory time, defendant no. 1 deserves an opportunity to present his defense. If defendant no.1 is permitted to file his written statement, the same will assist the court to decide the controversy between the parties on merit. Moreover, the provision of Order VIII Rule 1 of the Code of Civil Procedure is not mandatory but directory. The strict interpretation of the said provision would defeat the justice. Inconvenience caused to plaintiff can be compensated by imposing cost upon defendant no.1. As stated above there is a delay of 1 year 42 days in filing of written statement. Therefore, it will be just and proper to impose cost of Rs.1300/- i.e. Rs.100/- for each month upon defendant no.1 to be paid by him to plaintiff. Consequently, to decide the present suit on merits and to give an opportunity to the defendant no. 1 to present his case by filing written statement, I proceed to pass following order:

**ORDER**

- 1] Application is allowed.
- 2] Written Statement of defendant no.1 is taken on record

:: 4 ::

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subject to cost of Rs.1300/- to be paid by defendant no.1 to plaintiff.

3] Application is disposed off accordingly.

Place : Kurundwad.  
Date : 02/01/2020.

( S. K. Shaikh )  
Joint Civil Judge Junior Division,  
Kurundwad.

:: 5 ::

Regular Civil Suit No.66/2018  
CNR No.MHKO180001972018  
Order Below Exh.15

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

|                             |   |                                                                         |
|-----------------------------|---|-------------------------------------------------------------------------|
| Name of the Stenographer    | : | Rahul Laxman Mane                                                       |
| Name of Court               | : | Shri. S. K. Shaikh,<br>Joint Civil Judge Junior<br>Division, Kurundwad. |
| Date of Dictation           | : | 02/01/2020                                                              |
| Order signed by the P.O. on | : | 02/01/2020                                                              |
| Order uploaded on           | : | 02/01/2020                                                              |