



Order Below Exh.15 In R.C.S. No. 76/2023
(Rajaram Ghunke v. Sadhana Nalawade and Ors.)

Defendant Nos.5 to 11 have filed present application for setting aside 'no written statement and say' order passed against them.

02. Defendant Nos.5 to 11 contended that, due to illness and old age of defendant Nos.6 to 8 and 11 and other unavoidable circumstances, they could not file their written statement and say within period of limitation. Their written statement and say is necessary for the just decision of the suit. Hence, their written statement and say may be taken on record. They lastly prayed that, the application may be allowed.

03. The plaintiff has strongly resisted present application by filing his say on overleaf of present application. He contended that, the application is devoid of merits. Hence, he prayed that, the application may be rejected. He alternatively contended that, if the Court comes to conclusion to allow present application, it may be allowed subject to cost.

04. Heard both sides, at length. They have argued in consonance of their pleadings.

05. On perusal of record and proceeding it appears that, this is a suit for declaration and perpetual injunction. It shows that, in spite of ample opportunities being given, defendant Nos.5 to 11 failed to file their written statement and say within stipulated period of time. Hence, as per order passed below Exh.1 on 19.06.2024, the suit proceeded further without written statement of defendant Nos.5 to 11. Likewise, application (Exh.5) proceeded further without say of defendant No.11. However, reasons mentioned by defendant Nos.5 to 11 for non-filing of written

statement and say within stipulated time are justifiable. Hence, in view of reasons mentioned in the application, submissions of both sides as well as considering nature of the suit and interest of parties involved in the suit property, it would be just and proper to give opportunity to defendant Nos.5 to 11 to contest the suit on merit by filing on record their written statement and say. Defendant Nos.5 to 11 have filed this application after considerable lapse of time. However, the delay caused by defendant Nos.5 to 11 can be compensated by imposing cost upon them. Considering the delay caused, it would be just and proper to impose cost of Rs.300/- on defendant Nos.5 to 11, which shall be payable to the plaintiff. Resultantly, I pass following order :-

:: ORDER ::

1. Application (Exh.15) is hereby allowed subject to costs of Rs.300/- (Rupees Three Hundred Only) payable to the plaintiff.
2. Payment of cost shall be condition precedent for taking on record written statement and say of defendant Nos.5 to 11.
3. Accordingly, application (Exh.15) is disposed of.

(Dictated and pronounced in the Open Court).

Date: 03.01.2025.

(Balasaheb S. Gaikwad)
Civil Judge, Junior Division,
Kurundwad.