



Order Below Exh.12 In R.C.S. No.131/2023
(Amol Patil v. Devgonda Patil And Anr.)

Defendant No.1 has filed present application for setting aside 'no written statement' order passed against him.

02. Defendant No.1 contended that, due to justifiable ground and unavoidable circumstances, he could not file his written statement within prescribed period. He further contended that, his written statement is necessary for the just decision of the suit. Hence, his written statement may be taken on record. Therefore, he prayed that, the application may be allowed.

03. The plaintiff has strongly resisted present application by filing his say at Exh.13. He contended that, reasons mentioned in the application are not justifiable. Defendant No.1 has filed present application in order to delay the suit. The application is devoid of merits. Hence, he prayed that, the application may be rejected. He alternatively prayed that, if the Court comes to conclusion to allow present application, the application may be allowed subject to cost of Rs.2,000/-.

04. Heard learned advocates for both parties 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 partition and separate possession. It shows that, in spite of ample opportunities being given, defendant No.1 failed to file his written statement within stipulated period of time. Hence, as per order passed below Exh.1 dated 09.11.2023, the suit proceeded further without written statement of defendant No.1. However, 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 suit properties, it would be just and proper to give opportunity to defendant No.1 to contest the suit on merit by filing on record his written statement. Defendant No.1 has filed present application after considerable lapse of time. However, the delay caused by defendant No.1 can be compensated by imposing cost upon him. Considering the delay caused, it would be just and proper to impose cost of Rs.1,000/- on defendant No.1, which shall be payable to the plaintiff. Resultantly, I pass following order :-

:: ORDER ::

1. Application (Exh.12) is hereby allowed subject to cost of Rs.1,000/- (Rupees One Thousand Only) payable to the plaintiff.
2. Payment of cost shall be condition precedent for taking on record written statement of defendant No.1.
3. Accordingly, application (Exh.12) is disposed of.

(Dictated and pronounced in the Open Court).

Date: 04.11.2024.

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