



ORDER BELOW EXH.16 IN REG. CIVIL SUIT NO.
82/2018

- 1) By virtue of this application, defendants no.1 to 4 prayed to set-aside “No Written Statement” order passed against them below Exh. 1 on 23/01/2019.

- 2) It is submitted by way of present application that, on 23/01/2019, the present suit was listed for written statement. However, on above date, defendants were ill and they did not attended the court. On the above date, there was also a heavy rain due to which it was not possible to defendants to attend the court. As a result of which, on the above date, defendants remained absent and did not file their written statement.

- 3) It is further submitted that, defendant no.1 is engaged in medical business. Defendant no.3 is working with a High School. Defendant no.2 and 4 are engaged in agricultural work and other business. Further, during the pendency of the suit the son of defendant no.1 had expired. Thus, as defendants are engaged in their work and due to death of defendant no.1's son, defendants were unable to contact with their advocate in order to prepare and file written statement within time.

4) It is further submitted that, if written statement of defendants is taken on record, it will assist the court to decide the matter on merit and no harm of what so ever nature will cause to plaintiff. On the above reasons, defendants prayed a set-aside above said “No Written Statement” order. Application is supported by affidavit.

5) Plaintiff has filed his say below Exh. 17 thereby resisted the present application. As per plaintiff, the reasons mentioned in this application are false. Defendants have not filed any documentary evidence to corroborate their cause. Defendants have intentionally not filed Written Statement within statutory period.

6) Plaintiff further submitted that, on 23/01/2019 there were no rain of whatsoever nature. Further, the son of defendant no.1 had expired in the month of September 2019. Therefore, the reasons mentioned by the defendants are after thought.

7) Plaintiff further submitted that, after institution of present suit, ample opportunities were given to the defendants to file written statement. However, defendants intentionally failed to file the same in order to prolong the case. In the present suit, after the “No Written Statement Order”, plaintiff had adduce his evidence and thereafter plaintiff had also closed his evidence. When the case was listed for final argument, defendants filed

present application. Plaintiff lastly submitted that the sole intention of defendant is to prolong the case. On the above reasons plaintiff prayed to reject the application.

8) 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, suit summons was served upon the defendants on 04/07/2018. On 07/07/2018 vide Exh.10 they appeared in the present suit. Thereafter, on several dates, vide Exh.11 and 12, defendants were given time to file written statement. Thereafter, they remained absent. As they failed to file the same in spite of several opportunities, their right to file written statement was closed by the court on 23/01/2019. Defendants sought to recall the said order on the above reasons. Defendants have not filed any documents to corroborate the said reasons. The said reasons are stated on oath.

9) It is worth noticing that, present suit has been filed by plaintiff claiming perpetual injunction. In my opinion, even though defendants were not vigilant to conduct the case by filing written statement, they deserve an opportunity to present their defense. In my opinion, if the defendants are permitted to file 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, 1908 is not mandatory but directory. The strict interpretation of

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the said provision would defeat the justice. Inconvenience or delay caused due to inaction of the defendants in not filing written statement within stipulated time can be compensated by imposing adequate cost.

10) No Written Statement order was passed on 23/01/2019. Present application has been filed on 18/10/2019 i.e. after almost 471 days from service of summons i.e. from 04/07/2018. Therefore, considering the delay caused by the defendants in filing the written statement, it will be just, legal and proper to impose a cost of Rs. 500/- upon each defendants i.e. cost of Rs. 2,000/- in total which will be paid by them to plaintiff. Consequently, for the aforesaid reasons, I proceed to pass following order:

ORDER

- 1] Application is allowed.
- 2] "No Written Statement" order dated 23/01/2019 below Exh.1 against the defendants no. 1 to 4 is set-aside subject to costs of Rs. 500/- to be paid by each defendants i.e. Rs.2000/- in total to Plaintiff.
- 3] Application is disposed of accordingly.

Place : Radhanagari.
Date : 08/03/2021.

(S. K. Shaikh)
Civil Judge Junior Division,
Radhanagari.