

**Order below Exh.15 in R.C.S. No. 536 of 2023**

(Passed on this 18th day of October, 2022)

Vinayak & Ors. -Vrs.- Vasant & Ors.

CNR NO. MHLA060011222023

Defendants have filed the present application for condonation of delay and permission to file written statement on record after expiry of stipulated period of limitation i.e. 90 days.

02. Ld Advocate on behalf of defendants submitted that, he was unable to contact with the previous Ld Advocate engaged by defendants. Defendants could not file their written statement within stipulated time. There is delay of 33 days caused in their filing written statement due to the reason of providing documents and information between the defendants and the previous Advocate. Moreover, Ld Advocate for defendants was busy in getting information regarding documents in the present suit. The delay caused is not intentional. Therefore, he prayed to condone the delay and grant permission to adduce written statement of defendants on record.

03. On the contrary, Ld Advocate for the plaintiffs have filed say on the overleaf of the application. He contended that defendants have shown the delay caused of 33 days. But, in fact there is delay of more than 33 days caused. Defendants neither specified proper reason for the delay caused nor given the explanation of each day of delay caused in filing their written statement. This Court has issued Summons upon defendants and accordingly bailiff report dated 04.05.2023 is filed on record. The bailiff report is that defendants refused to accept summons. Therefore, he prayed to reject the application with cost.

04. Heard Ld Advocates of both sides. They argue in consonance with their application and say.

05. Perused the application, say of plaintiffs and the record of the present suit. On perusal, it shows that defendants have refused to accept service of summons served upon them vide bailiff report dated 29.04.2023 (**Exh.09**). It is deemed service as per the provisions of C.P.C. They appeared but inspite of sufficient opportunities given to them, they failed to file their written statement within prescribed period of time of 90 days as provided in Order VIII Rule 1 of Code of Civil Procedure. Their time to file written statement expired. The present application came to be filed on 18.09.2023. There is an inordinate delay caused in filing their written statement. However, the application is supported by affidavit (**Exh.16**). Therefore, there is no reason to disbelieve the contention of defendants. Moreover, the suit is for perpetual injunction and declaration of ownership. Rights of the parties are involved in the present suit. Therefore, it would be just and proper to give opportunity to defendants to put up their case by filing written statement. This would help the Court in deciding the controversy on merits. Moreover, the suit is at initial stage. Hence, for this reason the application deserves to be allowed and delay caused shall be condoned. However, for causing delay, cost has to be saddled on defendants. Hence, I proceed to pass the following order.

ORDER

- 1) Application (**Exh.15**) is allowed subject to cost of Rs.500/- (Rupees Five Hundred Only) and the said amount be credited to Legal Services Authority.

- 2) Delay caused is hereby condoned.
- 3) On payment of cost, the written statement shall be taken on record.

(Dictated and pronounced in open Court).

Place : Ahmedpur.

Date : 18.10.2023.

(K. B. Gadiwale)

Jt. Civil Judge Junior Division,
(Court No.04) Tq.Ahmedpur.