

**Common Order below Exh.27 & 29 in R.C.S. No.430 of 2020**(Passed on this 17th day of April, 2023)**Shamkant-Vrs.- Unmesh & Ors.****CNR NO. MH060016642020**

Defendants No. 01 to 03 have filed the present application for condonation of delay and permission to file written statement on record by setting aside 'No Written Statement' order passed against them below Exh.01 dated 03.02.2023.

02. Defendants No. 01 to 03 submitted that due to illness of defendant No.03 and also due to the personal difficulty, they could not file their written statement within stipulated time. So, the Hon'ble Court has passed 'No Written Statement' order against them. There is a delay of 94 days caused in filing the written statement. The delay caused is not intentional. The subject matter in the present suit is valuable landed property. Therefore, the delay caused be condoned in the interest of justice. Therefore, they prayed to condone the delay and grant permission to adduce their written statement on record by setting aside no written statement order passed against them.

03. On the contrary, plaintiffs have filed their say on the overleaf of the application(**Exh.27 & 29**). They contended that summons were served to defendants No.01 to 03 by concerned bailiff on 23.02.2022. The delay caused in filing their written statement is 01 year and 01 month. But, defendants No.01 to 03 have wrongly mentioned in their application that there is a delay of 94 days caused. Defendants No.01 to 03 have filed late written statement only to harass them. The reason mentioned in the application is not legal one. The present application is not tenable. Therefore, they prayed to reject both applications (**Exh.27 & 29**).

04. Heard Learned Advocates of both sides. They argued in consonance with their application and say.

05. Perused the application, say of plaintiffs and the record of the suit. On perusal, it appears that suit summons were not served upon defendants No.01 to 03. They appeared before Court through Ld Advocate vide V.P. (Exh.20) on 15.10.2022. In spite 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 on 15.01.2023. The present application came to be filed on 28.03.2023. There is a delay of 02 months and 13 days in filing their written statement. However, the applications are supported by affidavit. Moreover, the suit is for declaration of ownership and perpetual injunction. Rights of the parties are involved in the present suit. Therefore, it would be just and proper to give opportunity to defendant Nos.01 to 03 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) Applications (Exh.27 & 29) are allowed subject to cost of Rs.200/- (Rupees Two Hundred Only) each to be paid defendants No.01 to 03 to the plaintiffs.
- 2) Delay caused is hereby condoned.
- 3) On payment of cost, the order of 'No Written Statement' passed below Exh.01 dated 03.02.2023 shall be set aside and the written statement shall be taken on record.

(Dictated and pronounced in open Court).

Place : Ahmedpur.
Date : 17.04.2023.

(K. B. Gadiwale)
Jt. Civil Judge Junior Division,
(Court No.04) Tq.Ahmedpur
Dist.Latur.