

**Order below Exh.42 In R.C.S. No.904 of 2023**(Passed on this 31<sup>st</sup> day of August, 2024)**Shivaji -Vrs.- Hanmant & Ors.****CNR NO.MHLA060020032023**

The defendant No.6 has filed the present application for setting aside 'No Written Statement' order passed below Exh.01 dated 02.01.2024 and to accept their Written Statement on record.

**02.** Ld Advocate on behalf of defendant No.6 submitted that, due to unavailability of essential documents defendant No.6 could not file his written statement within stipulated period. So, this Court has passed 'No Written Statement' order against defendant No.6. Therefore, he prayed to allow the application.

**03.** On the contrary, Ld Advocate on behalf of the plaintiff has filed say on the overleaf of the application. He contended that, the suit summons were served on defendant No.6 on 19.09.2023. This Court has given so many chances to defendant No.6 to file his written statement but in vain. So, this Court has passed 'No Written Statement' order against defendant No.6 on 02.01.2024. The reason mentioned in the application is not proper and baseless. Therefore, he prayed to reject the application with heavy cost.

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

**05.** Perused the application, say of plaintiff and the record of the suit. On perusal, it shows that suit summons were duly served upon defendant No.06 on 19.09.2023 vide bailiff report

**Exh.15.** Defendant No.6 appeared but inspite of sufficient opportunities given to her, she failed to file her written statement within prescribed period of time of 90 days as provided in Order VIII Rule 1 of Code of Civil Procedure. Her time to file written statement expired on 19.12.2023. The present application came to be filed on 27.02.2024. There is a delay of 02 months 08 days in filing written statement. However, the application is supported by affidavit (**Exh.43**). Therefore, there is no reason to disbelieve the contentions made by defendant No.6. Moreover, the suit is for perpetual injunction and declaration of ownership. Therefore, it would be just and proper to give opportunity to defendant No.6 to put up her 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. However, for causing delay, cost has to be saddled on defendant No.6. Hence, I proceed to pass the following order.

### **ORDER**

- 1) The application (**Exh.42**) is allowed subject to cost of Rs.300/- (Rupees Three Hundred Only) to be paid by defendant No.6 to the plaintiff.
- 2) On payment of cost, order of 'No Written Statement' passed below Exh.01 dated 02.01.2024 shall be set aside and the written statement shall be taken on record.

(Dictated and pronounced in open Court).

Place : Ahmedpur.  
Date : 31.08.2024.

Sd/-  
(**K. B. Gadiwale**)  
Jt Civil Judge Junior Division,  
(Court No.04), Ahmedpur.