

Order below Exh.39 in R.C.S.No. 3/2019

This is an application filed by defendant No.3 for setting aside No written statement order passed against him.

2. Defendant No.3 vide this application contends that he has been duly served suit summons in the matter and he has failed to file their written statement in the present matter. Accordingly, no written statement order came to be passed against the defendant No.3. Hence, he prayed that no written statement order passed against him may be set aside.

3. Plaintiff filed her say overleaf of the application and strongly opposed the application on a ground that reason stated in the application are not genuine. The defendant No.3 should have filed their written statement within period of 90 days as per Order 8 rule 1 of the CPC. Hence, he prayed to reject the application.

4. Perused the application, say filed by the plaintiff and record of the case. Heard the Ld. Adv. for the defendant and Ld. Adv. for plaintiff. It appears from the record that defendant No.3 is duly served with suit summons on 16/01/2019 vide bailiff report Exh.8. However, he failed to file his written statement.

5. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the

opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the C.P.C. or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

6. Hence, having regard to reason stated in the application & facts and circumstances of the case in hand and having regard to principle of natural justice opportunity needs to be given to the defendant to contest the suit on merit. However there is delay in filing written statement by the defendant No.3. But at the same time, it is necessary to saddle the Costs of delay caused in filing written statement. As a result of upshot of the above discussion, application deserves to be allowed. Hence, I proceed to pass the following order.

ORDER

- (1) Application Exh.39 is allowed, subject to Costs of Rs.200/- to be paid to plaintiff on or before next date.
- (2) No written statement order passed against the defendant No.3 is hereby set aside on payment of Costs.

Udgir.
Date: 07/10/2022

Sd/-
(K. A. Powar)
2nd Jt. Civil Judge J.D., Udgir.