

MHLA140015262014



Order below Exh No. 106

The defendant No.7 has filed application for setting aside No W.S. order.

2. It contended that, the defendant No.7 appeared before the court through his advocate. Due to the various litigation regarding the suit property and adjacent land, he could not remain present in the Court. Moreover, he was in the search of relevant documents to file the written statement. Further, during the pendency of the suit, he was suffering from various ailments as well as faced the family problem and unable to contact his advocate. In result No W.S order came to be passed against him. In order to decide present claim on merit his written statement should on record, so as the suit is related to immovable property. Hence, prayed for setting aside the No W.S order.

3. The plaintiff has filed his say vide Exh. No. 108 and resisted the application on the ground that the final argument advanced by the plaintiff on 15.06.2026 and now the case is posted for the judgment. Therefore, at this stage no written statement order passed against defendant No.7 can not be set aside. Moreover, he has not provided any cogent reason for setting aside order. The suit is filed in the year 2014 and No W.S. order came to be passed on

14.07.2023. The present application is filed after the inordinate delay of 3 years. Hence, he prayed for rejection of application.

4. Perused the application and the reply. Heard the Advocates representing the parties.

5. Advocate for the plaintiff placed reliance on ***Mohammed Yusuf V/s Faij Mohammad & Ors, Civil Appeal No.7209 of 2008*** wherein Hon'ble Apex Court further observed that it would be proper to encourage the belief in litigants that imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional case, will the breach thereof will be condoned.

6. I have gone through the aforesaid authority. The Hon'ble Apex Court upheld the order of trial Court and Revisional Court who had assigned the sufficient and cogent reason in support of their order. However, further observed that Hon'ble High Court could set aside the order passed by the Ld. Trial Court and Revisional Court only on the limited ground, namely illegality, irrationality and procedural impropriety. The Mohammed (supra) stated that in rare and exceptional cases Court can condone the delay for filing written statement. Therefore, Mohammad (supra) would not be useful to the plaintiff.

7. The present suit is instituted for declaration and perpetual injunction in the year 2014. The present application is filed on 22.06.2026. The record shows that, defendant No.7 is impleaded as a party to the suit by passing order below Exh. No. 43 dated 16.11.2019. The record further goes to shows that the defendant No. 7 appeared through the advocate on 19.09.2022. However, failed to

file written statement within the stipulated period. Hence, an order of 'No Written Statement' was passed.

8. The defendant No. 7 has filed on the record some medical documents vide Ex. No. 111. I have gone through the said documents, which includes some medical test was conducted by the defendant No. 7 on 26.07.2025 and accordingly, he was medicated. Admittedly, inordinate delay of more than 3 years to file written statement. Thus, the document submitted by defendant No.7 is not supported his contention for the condonation of delay in filing written statement.

9. On the perusal of record it transpire that present defendant No.7 is the subsequent purchaser of suit property. No doubt valuable rights of the defendant No. 7 is involved in the present case. Further, the reasons assigned for setting aside No W.S. order is not satisfactory.

10. The rozanama shows that, advocate for the plaintiff advanced his final argument on 17.06.2026. The evidence of defendant closed by passing order below Exh No.1 dated 16.03.2026. Further the application has been filed after the delay about 4 years. Taking into account the nature of the suit and right of present defendant No.7, this Court is opinion that the dispute should be so as far as possible be decided on merit. Due to the conduct of defendant No.7 case has been dragged back. At the same time defendant No.7 can not be permitted to benefit from the such inordinate delay without compensating the plaintiff.

11. However, considering the nature of the suit, it is expedient that an opportunity shall be given to defendant No.7 to contest the suit on merit. But for causing delay the defendant No. 7 can be saddled with cost. Hence, the application is allowed subject to the cost of **Rs.4000/-** to be paid to the plaintiff on or before the next date, whereon the written statement can be accepted. Failure to comply with the order would make the order of 'No Written Statement' stand.

Date: 13.07.2026
Ausa

(Shubhangi H. Nalawade)
3rd Jt. C.J.J.D, Ausa.