



R.C.S NO.91/2021
Akabarkhan VS. Mainoddin
and Ors.5

ORDER BELOW EXH.22
(CNR NO.MHLA150006262021)

The suit is instituted for partition and alternatively for declaration and injunction against the defendants. Defendant No.1,2 and 4 served with suit summons on 28/06/2021 and defendant No.5 and 6 have sue-motu appeared in the suit on 01/07/2021. But, they failed to file their written statement within statutory period. So, this court passed No written statement order on 25/08/2022 below Exh.1 and directed to proceed with the suit without written statement of the defendant No.1,2,4 to 6. Hence, the defendant No. 1,2,4 to 6 have filed present application for con-donation for filing written statement and also prayed to take their written statement on record (Exh.22).

2. It is stated in application that, the defendant No. 1,2,4 to 6 appeared in the suit on 27/09/2022 and they could not filed their written statement within the prescribed period of limitation due covid-19 pandemic and due to availability of certain important documents.

3. It is contended by the defendants that they could not filed their written statement within the prescribed period of limitation due covid-19 pandemic. The delay was not intentional. Therefore, they prayed for con-donation of delay caused for filing their written statement. Hence, prayed to condone the delay by allowing this application.

4. Plaintiff failed his say below Exh. 22 and contended that reason mentioned in the application for delay con donation is not satisfactory. The defendants intentionally not filed their Written Statement. Hence, he prayed reject to application with heavy cost.



R.C.S NO.91/2021
Akabarkhan VS. Mainoddin
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5. Read the application and say thereon. Heard learned advocate for both sides. It appears from record that, suit is filed for partition and alternatively for declaration and injunction. It also appears from record that defendant No.1,2,4 to 6 failed to file written statement within statutory period. Hence, no written statement order was passed against them. Subject matter of the suit is immovable property and valuable rights of the parties are involved in it. No counter affidavit of plaintiff is filed on record.

6. It appears from record that, defendant No.1,2,4 to 6 could not file their written statement within the statutory period of limitation due covid-19 pandemic. However, due to the covid-19 pandemic, the Hon'ble Apex Court in **Misc. Civil Appeal No. 665/2021 in SMW(C) No.3 of 2020 dated 23.9.2021** exempted the period from 23.3.2020 to 28.2.2022 from the period of limitation. Hence, The reason stated by the defendant No. 1,2,4 to 6 for delay is satisfactory.

7. For the conclusive decision of the suit, it is necessary to grant the opportunity to defendant No. 1,2,4 to 6 to defend the suit by filing their written statement. By granting permission for filing written statement to present defendant No. 1,2,4 to 6 will not cause any kind of loss or prejudice to the plaintiff. On the other hand, it will help to the court to decide the suit on merit. So, present application deserves to be allowed. At the same time it is necessary to compensate the plaintiff for unnecessary delay. Hence, I pass following order.



R.C.S NO.91/2021
Akabarkhan VS. Mainoddin
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ORDER

1. Application stands allowed subject to cost of Rs.500/-.
2. The present defendant No.1,2,4 to 6 are directed to pay the cost amount to the plaintiff on or before next date.
3. After payment of cost the Written Statement of defendant No.1,2,4 to 6 shall form part of record.

Date :- 10/10/2022

(M.S. Luniya)
Jt. C.J.J.D. Chakur.



R.C.S NO.91/2021
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C E R T I F I C A T E

I affirm that the contents of this P. D.F. file order are same word for word as per original order.

Name of Jr. Clerk	: Atul Lalasaheb More
Court Name	: M.S. Luniya, Jt.C.J.J.D., Chakur.
Order Date	: 10/10/2022
Order signed by presiding officer on	: 10/10/2022
Order uploaded on	: 10/10/2022