

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, TALODA**Reg. Civil Suit No. 27 of 2015**

Mohansing Raising Padavi ... Plaintiff

VERSUS

Pundalik Poshya More ... Defendant

Shri. P.R. Joshi learned advocate for plaintiff
Shri. S.P. Thakare learned advocate for defendant

ORDER PASSED BELOW EXHIBIT 21
(Date 18.02.2017)

The present application has been filed by plaintiff for setting aside 'no written statement' order to the counter claim of defendant passed below Exh.15 against them on 20.08.2016. The say of defendant was called for.

2. Heard Shri. P.R. Joshi learned advocate for Plaintiff. They submitted that the suit has been filed for Rent and Possession of the Grampanchayat House No.253 situated at post Ranzani, Tal. Taloda, Dist. Nandurbar (Hereinafter shall be referred as a suit property). The defendant appeared and contested the suit by filing his written statement with the counter claim below Exh.15. The present plaintiff had changed his previous advocate on record. In order to get in custody the necessary document with his previous advocate on record he could not prepared the written statement to the counter claim of defendant. The present plaintiff is old age fellow and deaf. Therefore, he could not reached to his advocate on record. Hence plaintiff failed to file the written statement the counter claim of defendant. Hence, 'no written statement' order passed against plaintiff on 20.08.2016.

3. On the other hand learned advocate Shri. S.P. Thakare for defendant filed their say below Exh.24, submitted that the application is filed with ill-intention in order to prolonged the proceeding. The necessary documents was already filed by the plaintiff on record at the time of institution of suit. The sufficient opportunity is granted to plaintiff. The reasons mention in the application is not true and correct. Under such circumstances they prayed for rejection of the application.

4. Heard both side. Perused record put up before me. Considering the matter I am of the opinion that, procedural of law is not for miscarriage of justice but it is for handmade of justice. In order to provide the equal opportunity it is necessary to provide one chance to plaintiff. The present suit has been filed for Rent and Possession. The defendant come with the different theory by placing a counter claim. The evidence of the plaintiff witness is yet to begin. If I allow this application no irreparable loss would be caused to defendant. But on the other hand, if I disallow this application then ultimately the plaintiff may suffer an irreparable loss.

5. It is worthy to note that “no written statement” order passed on 20.08.2016. Whereas, the application for setting aside no written statement order is filed on 07.11.2016. Therefore, the plaintiff must be saddled with the cost. Considering the matter the following order will meets the ends of justice.

ORDER

1. The application is allowed.
2. The plaintiff is directed to pay the cost of ₹ 300/- (In words sum of Rupees Three Hundred only) to the defendant on or before next date.

3. After depositing the cost, the defendant is at liberty to withdraw the same and written statement filed by the plaintiff to the counter claim of defendant will be considered.
4. The parties shall take the not of this order and comply accordingly.

Date :- 18.02.2017
Place :- Taloda

Sd/-
(S. A. Deshpande)
Civil Judge, Junior Division,
Taloda, Dist. Nandurbar