

MHND260006222021



ORDER BELOW EXH.42

This is an application filed by defendants no. 14 praying for setting aside the order of No written statement passed by this Court of dated 29/03/2023. As per defendants due to unavailability of important document and suffering from illness he could not file his written-statement on time. Hence, prayed to set aside No written-statement order. Application is supported with affidavit.

2. This Court called for the say of plaintiffs, they opposed this application on the ground that, already too much time wasted for this application. Finally, prayed to reject this application with heavy costs.

3. Read application, perused the record. Heard learned Advocates for defendant no. 14 and plaintiffs.

4. On perusal of the record, it shows that the summons was duly served to defendant no. 14 on 03/12/2022 though defendant no. 14 appeared through advocate on 21/12/2022. He sought time to file written statement by filing applications which was granted by this court.

5. As per Order VIII Rule-I of Code of Civil Procedure the defendant has to file his written statement within 30 days from service of summons to him. In the present case though the summons served to the defendant no. 14 on 03/12/2022 he had to file his written statement till 03/03/2023. As per provision to the Order-VIII Rule-I that time may be extended till 03/03/2023. But defendant no. 14 did not file any application praying for extension of time. Subsequently this court passed the order of

No written statement against him. Now defendant no. 14 is praying for setting-aside order of no written statement.

6. As per provisions of Order-VIII, Rule-I defendant no. 14 have ninety days time to file his defence.

7. Considering the ratio laid down by Hon'ble Apex Court in Para No. 21 of **Salem Advocate Bar Assn. v. Union of India reported in (2005) 6 SCC 344 : 2005 SCC OnLine SC 1120.** In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order VIII Rule 1 providing for the upper limit of 90 days to file written statement is directory.

8. Further in para 21 of the Judgment cited supra it has observed that. **The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.** To give fair opportunity to defendant no. 14 his written statement has to be taken on record, so that he could brought his defence. No one should be unheard. Both the parties had to be given an opportunity of being heard as per the audi alteram partem. Justice will be given to both parties. Inconveniency caused to plaintiffs can be curved out by passing order of costs in their favor. Considering, all above aspects of the matter I pass following order :-

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Saraswatibai +1 Vs. Baba+13

:ORDER:

1. The Application is allowed subject to costs of Rs.300/- payable to plaintiffs.
2. Order of No written-statement passed by this court of dated 29/03/2023 is set-aside and written statement is allowed to be taken on record.

sd/-

Place : Ardhapur
Date : 12-09-2023

Jt. Civil Judge Jr. Div.
Ardhapur.

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Saraswatibai +1 Vs. Baba+13

CERTIFICATE

I affirm that the contents of this [P.D.F.](#) file order are same, word to word, as per the original order.

Name of the Jr. Clerk: A.V.Shahane

Court of : Jt. Civil Judge Junior Division, & JMFC Court No.
02, Ardhapur Dist. Nanded.

Date of pronouncement of Judgment/Order : 12.09.2023

Judgment/Order signed by the Presiding Officer : 12.09.2023

Judgment/Order uploaded on : 12.09.2023