

**RCS No.2/2021**  
**Navnath -vs- Jahir Abbas**

**COMMON ORDER BELOW EXH.42-A AND 44**

- 1) By way of these applications, the defendant is praying for condonation of delay in filing written statement and further for setting aside no written statement order dated 20/08/2021.
- 2) Perused the applications and say given by the plaintiff, vide reply Exhibits 45 and 46.
- 3) The defendant submits that he was served with suit summons on 11/01/2021. Pursuant thereto, on 09/02/2021 he went to the court, but due to Covid-19 pandemic he was not allowed to enter into the court premises, compelling him to return back. He would submit that thereafter, his family members got ill, thus, he could not enquire about the case with his advocate. He would further submit that in the last week of December 2021, when the plaintiff and his associates started quarreling with him, he approached his advocate, then on 28/12/2021 he came to know that the court was pleased to pass no written statement order dated 20/08/2021 against him. He would submit that at the relevant time there was lock down due to Covid-19 pandemic. The written statement could not be filed within statutory period of 90 days from the date of service of summons. Consequently, no written statement order came to be passed against him. Hence, he prayed that the applications be allowed in the interest of justice.
- 4) Per contra, the plaintiff stoutly resisted the present

applications on the ground that they are nothing but deliberate attempt to protract the case in hand. He would submit that the defendant was regularly attending the court proceeding and was fully aware about the status of the matter. He would submit that as the defendant failed to file his written statement within statutory period of 90 days from the service of summons, the court was pleased to pass no written statement order 28/08/2021 against him. He would submit that the plaintiff filed his evidence affidavits on Exhs.13, 14 and 25. Although ample opportunities have been given to the defendant, he failed to cross examine the plaintiff, therefore, this court was pleased to pass no cross order against him. Thus, plaintiff closed his evidence by filing puris (Exh.36). Thereafter, the matter was fixed for evidence of the defendant. As he failed to turn up to the court, this court was pleased to forfeit the right of the defendant to lead evidence. The matter then posted for argument on 22/12/2021 and 01/01/2022. However, on 04/01/2022 it is learnt to him that the defendant has filed the application for setting aside no written statement order by taking case on board. Banking upon the above submissions, he would submit that the grounds mentioned in the application do not warrant the setting aside no written statement order. Hence, he prays for rejection of the applications.

5) I have carefully gone through the record of the case. It is a matter of record that this is a suit for ejectment and possession, arrears of rent, damages and mesne profit in respect of the suit property. Needless to mention here that the civil rights of the parties

are entailed in the instant suit. The reason mentioned in the application for non-supplying of written statement within the stipulated time can be said to be a genuine and bona fide mistake. If the permission is granted to defendant to file the written statement on record, no prejudice would be caused to the plaintiff. Nay, this recourse would facilitate the court to adjudicate the case on merit. Apart from that, as regards the controversy at hands, the Hon'ble-Supreme Court has given the verdict and thereby relaxed the period of limitation from 15/03/2020 to 28/02/2022, and all persons have limitation period of 90 days from 01/03/2022. In this backdrop, I am of the considered view that there is no impediment in allowing the applications. Hence, I pass the following order.

**ORDER**

The applications stand allowed.

Kamptee  
Dated 02/05/2022

**Sd/-**  
(D. R. Bhola)  
Civil Judge Junior Division  
Kamptee