



Order below (Exh.16)
(Passed on 26.11.2024)

This is an application filed by the plaintiffs for setting aside order dated 07.08.2024 passed on Exh.12 and grant of permission to file written statement on record.

2. The plaintiffs submitted that the present suit is filed for the declaration by the plaintiff. The defendant has filed his counter claim for partition. The present matter was sent for mediation but it was unsuccessful. The case was put up for written statement of the plaintiff on counter claim. But the advocate was suffering from ill-health, due to which the advocate could not appear before the court. Hence by the present application the plaintiffs are praying to set aside no written statement order passed on counter claim and permission to file written statement.

3. The defendants filed their say and strongly opposed the application. The defendants submitted that the written statement has to be filed within 90 days. The reason mentioned in the application is not proper. The application is devoid of merits. Hence, defendants prayed to reject the application with cost.

4. Perused the application, say and record. Heard both sides. The counter claim is filed by the defendants against the plaintiff for partition. There is approximately 5 months delay in filing written

statement to the counter claim. The reason mentioned in the application is not sustainable. But to give fare chance to the plaintiffs and in the interest of principles of natural justice, the application needs to be allowed. The right to defend the counter claim must be given to the plaintiffs. If the application is allowed then the matter will be decided on merit. The delay caused by the plaintiffs can be compensated by imposing cost. Hence, I pass following order :

ORDER

1. The Application is allowed subject to cost of Rs.500/- payable to the defendants.
2. Written statement of the plaintiff be taken on record after payment of the cost.

Kamptee

Date : 26/11/2024.

**(Sagar S. Jadhav)
Jt. Civil Judge, Junior Division,
Kamptee.**