

MHNG080013552024



RCS No.76/2024

Harsha +1 Vs. M/s. Rajnandini Homes &
Ors.

ORDER (BELOW EXH.31)

(Passed on 02.04.2025)

Defendants No.2 to 4 have filed this application for setting aside no written statement order passed against them on 06.02.2025 and for grant of permission to file written statement on record.

2. It is contended that, defendant No.3 is more than 80 years old and residing with defendant No.2. As defendant No.3 was not well due to which defendants No.2 and 4 were taking care of their mother i.e. defendant No.3. Therefore, they cannot meet their Advocate for giving necessary instructions for preparing their written statement. Therefore, they could not file their written statement within time and therefore, this court passed no written statement order against them. Now they are ready with their written statement. No prejudice would be caused to the plaintiffs if the application is allowed. On the contrary great prejudice would be caused to the defendants if the application is not allowed. Hence, prayed to set aside said order and permitted them to file their written statement on record.

3. The plaintiffs have filed their say at Exh.32. It is contended that, the reason specified in the application is vague and after thought. There is no document to show ill health of defendant No.3. Defendant No.4 was served on 03.08.2024 and appeared

through Advocate on 05.08.2024. Defendants No.2 and 3 served on 27.09.2024 and appeared on 14.10.2024. The Advocate for defendants No.2 to 4 is same therefore, their Advocate had full knowledge about the present suit. More than five months time was granted to the defendants to file their written statement before passing no written statement order against them. The defendants have deliberately avoided to file their written statement within time. Hence, prayed to reject the application with costs.

4. Heard the learned Advocate for the defendants. The learned Advocate for the plaintiff was absent when called out for hearing. Hence, the application proceeded without hearing of the plaintiffs vide order below present application.

5. Perused the record. The plaintiffs have filed this suit for declaration and permanent injunction. Perusal of record shows that on 06.02.2025 this court passed no written statement order against defendants No.2 to 4. The defendants have filed present application on 03.03.2025 i.e. within one month from passing no written statement order against them. It means there is some delay in filing present application. Record shows that the defendants have not filed any application for condonation of delay. Perusal of record shows that the defendants have filed written statement on record along with purshis at Exh.33. It means the defendants are ready to contest the suit and therefore, in my view, it will be just and proper to condone the delay caused in filing present application, though not prayed by the defendants. If the application is allowed, it will also help to decide

the suit on merit. No prejudice would be caused to the plaintiffs if the application is allowed. Hence, the application deserves to be allowed subject to costs of Rs.300/-. Hence, I pass following order.

ORDER

1. Application (Exh.31) is allowed subject to costs of Rs.300/- (Rupees Three Hundred Only).
2. The delay is hereby condoned.
3. No written statement order passed against defendants No.2 to 4 is hereby set aside.
4. After paying costs to the plaintiffs, written statement of defendants No.2 to 4 will be read and recorded.

DATE : 02.04.2025

(R.R. Sherekar)
2nd Jt. Civil Judge Jr. Dn.
Kamptee, Dist. Nagpur.