

ORDER BELOW EXHIBIT NO.23
(PASSED ON 29th September 2020)

1. This is an application filed by the defendant for setting aside the order of no written statement passed below Exh.1 and for permission to file his written statement. Present defendant contended that plaintiff has filed the suit for permanent injunction. The defendant received the summons, the matter fixed for 24.01.2018 for appearance. The Counsel for the defendant is not regularly practicing in the Kuhl Court and therefore, the order of no written statement dated 04.07.2018 was not noticed by the counsel. It is further submitted that the counsel for the defendant met with an accident on 29.12.2018 and he could not move till March 2019. The counsel for the defendant appeared before the court month of September, 2019 in one of the matter "Parmeshwar -vs- Rama" and while inspecting the diary he made the inquiry about the present matter and that time for the first time he came to know about the no written statement. Now, present defendant is intending to file their written statement and context the suit. Present defendant have filed their written statement alongwith present application. Defendant prayed for setting aside no written statement order.

2. The application is resisted by the plaintiff by his say on the overleaf of said application. Plaintiff contended that the application is strongly opposed. Plaintiff prayed for rejection of the application.

3. Heard learned advocates appearing for rival parties.

4. The points for determination along with my findings thereon are as follows.

POINTS

FINDINGS.

(i) Whether there is a sufficient cause for the present defendant for not filing the written statements within prescribed period ?

Yes.

(ii) What order?

Application is allowed.

REASONS

AS TO POINT NO.1 :

5. This is a suit for mandatory and permanent injunction in respect of property bearing Gat No. 26/2 admeasuring 0.81 H.R. P.H. No.52 situated at Mouza Musalgaon, Tah. Kuhi, Dist. Nagpur. Therefore, liberal view have to be taken while considering this application. The reasons assigned appears to be satisfactory as without instructions and relevant documents it was not possible to file written statement. However, it is important to mention here that the procedure is hand made for justice. Considering the attending circumstances of lock-down and the restrictions imposed on natural movement of citizen for securing the social welfare procedural mandate shall not be operated as bars. Therefore, in my view, it will be in the interest of justice to grant an opportunity to the present defendant to contest the suit by filing their written statement. At the same time, plaintiff has to be compensated for the delay caused. Hence, the point No. 1 is answered in the 'affirmative' and in response to point No. 2, I proceed to pass the following order.

ORDER

The application (Exh.23) is allowed subject to payment of costs of Rs. 200/- to be paid by defendant to the plaintiff on or before next date or deposit in court.

Order below Exh.1 dated- 04.07.2018 in relation to no written statements is hereby set aside. Written statement filed by the defendant be taken on record after payment of costs.

Dt. 29th September, 2020.

(D. U. Rajput)
Civil Judge, Junior Division,
Kuhi.

CERTIFICATE

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

Name of the Stenographer : Suresh Shankarrao Koramkar.
Attached to Civil Judge, Jr. Dn.
Kuhi.

DISTRICT COURT
NAGPUR