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R.C.S. No. 51/2014

**Common Order passed below Exh.19 and 21**

In the present case, the plaintiff has filed application (**Exh.21**) stating that, defendant no. 1 to 3 appeared in the suit and took five adjournments and later on filed their written statement after three months stipulated period. At that time, they filed application (**Exh.19**) on which the Court has not called say of other side and written statement (**Exh.20**) was taken on record. It is necessary to give opportunity to the plaintiff to file their say. They further stated that, defendant caused delay in filing written statement, hence prayed for compensatory costs of Rs. 5,000/- whereas defendant nos. 1 to 3 have filed application (**Exh.19**) to allow them to file their written statement and counter claim by condoning delay stating that, defendant no.1 was taking treatment in Kamal Nayan Bajaj Hospital and he was unable to walk, therefore there is delay.

2] Perused both the applications. Here it is seen that, though the defendant has filed his say on overleaf of application (**Exh.21**), but despite order dated 16/10/2015 of say on Exh.19, the plaintiff failed to file his say on said application till today. On perusal of written statement annexed with application (**Exh.19**), it is seen that, inadvertently, when order below Exh.19, written statement filed alongwith said application was read and recorded.

3] I gone through the record. It is seen that, on 26/09/2014, no written statement order was passed on Exh.1 against the defendant. It is also fact on record that, application **Exh.19** was filed on 16/10/2015 and on the same day, there was other side to say order. Even on perusal of roznama dated 16/10/2015, it is seen that, plaintiff has taken the matter on board and filed application **Exh.19**. Thereafter, next date was fixed as 26/10/2015 for plaintiff's say and next dates were fixed as 18/11/2015 and 05/12/2015 for plaintiff's say on **Exh.19**. But it is seen that, plaintiff has not filed his say on

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**Exh.19** and lateron filed present application.

4] It is seen that, in fact, before recording written statement firstly application **Exh.19** ought to have been decided, however inadvertently no order was passed on it and written statement was recorded. Though this is so, it is a civil proceeding wherein inherent powers are also vested with the Courts. As a natural justice, the plaintiff's say was must for setting aside no written statement order. Similarly, recording of written statement itself shows that, it was accepted and allowed to file on record. However, to remove the irregularity of setting aside no written statement order, in my opinion, it is necessary to pass order on **Exh.19**. On perusal of **Exh.19**, it is seen that, defendant no. 1 was ill and could not supply documents within time to his advocate. His application is also annexed with affidavit of one Shivaji Ugale. Therefore in order to decide the suit, on merit, it is necessary to allow the defendants to file their written statement on record. It will help the Court to decide the matter on merit. No prejudice will cause to the plaintiff as he has opportunity to file say to the counter claim raised by the defendants. Further As I am going to accept the written statement which is already read and recorded, no question of imposing costs arose. Hence it is necessary to file application (**Exh.21**). Hence, the order

**Order**

- 1] Application (**Exh.19**) is allowed and written statement filed by defendant nos. 1 to 3 on dated 16/10/2015 is accepted on record as it is already read and recorded on 16/10/2015.
- 2] Application (**Exh.21**) stands cancelled.

Date :- 17/03/2016.

sdxxx  
( Renuka M. Satav )  
Civil Judge Junior Division  
Pimpalgaon (B).