

ORDER BELOW EX. 19**(Passed On 29th January 2020)**

1. This is an application for permission to file written statement preferred by defendant No. 1 and 2.

2. Perused the application and read the reply. I have heard Mrs. K.N Nimbalkar learned counsel for plaintiff and Mr. S.K Kulkarni learned counsel for defendant No. 1 and 2.

3. Mr. Kulkarni learned counsel for defendant No. 1 and 2 submitted that plaintiff has filed present suit for declaration, partition, separate partition and permanent injunction against defendants. Mr. Kulkarni submitted that defendant No. 1 and 2 had appeared in Court on 18-01-2019 but had failed to file written statement on record during the stipulated period. Mr. Kulkarni submitted that this Court had allowed previous applications for seeking time to file written statement of defendant No. 1 and 2. Mr. Kulkarni submitted on 30-09-2019 defendant No. 1 and 2 failed to appear in court nor they had preferred any application for seeking time to file their written statement hence, this Court was pleased to pass order of no written statement against defendant No. 1 and 2. Mr. Kulkarni submitted that defendant No. 1 and 2 could not get required documents for filing written statement hence, they failed to file their written statement on record. Mr. Kulkarni submitted in absence of written statement of defendant No. 1 and 2 they would suffer irreparable loss. Mr. Kulkarni submitted in

consonance to his application and prayed to permit plaintiff to file written statement of defendant No. 1 and 2 on record and accordingly prayed to allow the instant application.

4. Mrs. Nimbalkar learned counsel for plaintiffs vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mrs. Nimbalkar submitted that defendants are negligent and careless in the instant matter though they were served with summons. Mrs. Nimbalkar submitted that defendant No. 1 and 2 had appeared on 18-01-2019 and had filed vakalatnama of their Advocates and also had preferred application for seeking time to file their written statement on record. Mrs. Nimbalkar submitted that thereafter defendant No. 1 and 2 failed to appear in Court and at last this Court had passed order of no written statement against defendant on 30-09-2019. Mrs. Nimbalkar submitted that present application is filed on 29-11-2019 this itself reveals the vigilance and diligence of defendant No. 1 and 2 in contesting the present matter. Mrs. Nimbalkar submitted that present application is filed on 29-11-2019 that too after lapse of around seven months with ulterior motive just to harass plaintiffs and to prolong the present matter. Mrs. Nimbalkar submitted in consonance to her reply at Ex. 24 and prayed to outrightly reject it with heavy cost.

5. On perusal of record it reveals that defendant No. 1 and 2 had appeared in Court on 18-01-2019. The instant application is filed on record at on 29-11-2019 along with written statement of defendants. The instant matter is of the year 2018 and

though present application is filed after lapse of around seven months an opportunity needs to be given to defendant No. 1 and 2 to contest the suit. It is pertinent to mention that no prejudice as such would be caused to plaintiffs if they are compensated by way of cost. On the basis of arguments of rival sides, I am of the opinion that instant application needs to be allowed in the interest of justice. I am inclined to pass following order.

ORDER

1. The application at Ex. 19 is allowed subject to payment of cost of Rs. 500/- (Five Hundred Only) to other side & cost of Rs. 500/- (Five Hundred Only) in TLSA. On failure to pay cost to plaintiffs/deposit costs in Court instant matter would proceed further in accordance with law.
2. Defendant No. 1 and 2 are allowed to file his written statement on record, after payment of costs.

Place:- Chandwad

Date:- 29/01/2020.

(N. A Ingley)
Civil Judge Junior Division
Chandwad