

ORDER BELOW EXH.31

1. The present application is filed on behalf of defendant No.1 to set aside no written-statement order passed against him.
2. It is submitted that, the defendant No.1 has received suit summons on 03/02/2020. Previously, he has engaged Advocate Mr. S. R. Kale. Due to illness he could not contact with his advocate. Again on 05/01/2021 he has engaged another advocate. However, defendant No.1 himself and his family members were suffering from Covid -19 infection, therefore he could not supply necessary information and documents to prepare written-statement to his advocate. Due to restricted mode of working of the court in the period of lock down, he could not remain present in the court. Even he could not collect necessary documents for preparation of written-statement. He is having lawful defence in the suit. He has not caused any default intentionally. Therefore, requested to set aside no written-statement order passed against him.
3. The plaintiff by filing their say below Exh.33 resisted the application. Plaintiff has denied the contents of application in toto. Defendant has not submitted medical certificate about the suffering of himself or his family members from Covid-19 infection in the relevant time. Therefore, the reason cited is not sufficient to allow the application. The suit is fixed for final hearing. If application is allowed plaintiff will suffer therefore requested to reject the application with cost of Rs. 5000/-.
4. Heard both the side at length. Perused record of the case. The suit summons have been served on defendant No.1 on 03/02/2020.

Accordingly, he has appeared through his Advocate in the suit on 04/02/2020. Thereafter, again on 12/03/2020 he has engaged another Advocate vide Exh.16 and sought adjournment. Thereafter, on 05/09/2021 again he engaged another Advocate i.e., present one. The defendant was having knowledge of the pending suit. He has got sufficient opportunity to file written-statement. However, he has failed to do so. The application is not supported with medical certificate. Although, the present suit is for partition, declaration and for perpetual injunction. The valuable rights of parties are involved in the immovable properties. To decide the suit on its own merit it requires to extend an opportunity to defend the suit to the defendant No.1. If application is rejected, then definitely he will suffer irreparable loss. So far as, default on the part of defendant No.1 is concern it can be cured by following costs. Thus, I am inclined to allow the application by imposing cost in result pass following order -

- **ORDER** -

1. The application is allowed subject to cost of Rs.500/- (Rs. Five Hundred only).
2. The No written-statement order passed against defendant No.1 is hereby set aside subject to payment of aforesaid cost.

Date :- 08/06/2022

(A. S. Kambale)
Jt. Civil Judge, J.D., Yeola (Nashik).