

Reg. Civil Suit No.45/2023

Kamal Fakira Sabale & Ors

Vs

Ravindra Sakharam Nagare

ORDER BELOW EXH.15

This is an application filed on behalf of defendant for setting aside ex-party order and no written-statement order passed against him.

2. It is submitted that, the plaintiff has filed the present suit for declaration and perpetual injunction. The defendant appeared in the matter. He ought to have filed his written-statement within time, however for want of necessary documents his written-statement was not prepared within stipulated time. Thus, the suit was proceeded without written-statement against the defendant. The defendant is having lawful defence in the suit. If application is allowed there is no prejudice to the other side, on the contrary defendant will suffer. Therefore, requested to allow the application and set no written-statement order passed against him.

3. The plaintiff by filing their say overleaf of application have resisted the application. It is submitted that, the application is not true and correct. The delay caused in filling written statement has not properly explained. The defendant has filed present application only with intention to prolong the suit. The application is not tenable thus deserves to be rejected. It is further submitted that, if the court inclined to allow the application then requested to impose heavy cost.

4. Heard both the side at length. Perused record of the case. It reveals that defendant has served with suit summon on 06/03/2023. This application is moved on 03/11/2023. There is about more than five months delay caused in filling written-statement. The application is supported by the affidavit of the defendant. The ground for want of document has been cited for the default in filling written-statement, however no any details have been provided. The suit is for declaration and perpetual injunction. The valuable rights of the parties are involved in the suit. To decide the suit on its own merit it requires to permit the defendant to defend the suit by filling his written-statement. So far as, the default caused by the

defendant is concerned, it can be cured by imposing certain cost which will compensate the plaintiff for the default caused by the defendant. Hence, I am inclined to pass the following order-

- **ORDER** -

1. The application is allowed.
2. The no written-statement order passed against defendant is hereby set aside subject to cost of Rs.300/- payable to plaintiff.

Place- Yeola.
Date :- 19/12/2023.

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