

**ORDER BELOW EXH.44 IN R.C.S. NO.249 OF 2015.**

1] The instant application is moved by defendant Nos.5 to 10 for setting aside no written statement order passed against them by condoning delay and permit them to file written statement on record.

2] It is submitted by them that, the defendant No.5 served with summons on 06.06.2017 and defendant Nos.6 to 10 appeared in the suit on 18.08.2006. Since the respective dates of service of summons and appearance they have to file written statement on record within stipulated period. However, they did not receive copies of necessary documents required for filing written statement. Therefore, they could not file written statement within time. Thus, no written statement order came to be passed against them. There is delay of 1 year and 39 days caused in filing written statement by the defendant No.5. So also, delay of 341 days has been caused in filing written statement by the defendant Nos.6 to 10. It is further submitted by them that, in order to decide the suit on merits their written statement is necessary on record. If the application is allowed, no prejudice will be caused to the plaintiff. On the contrary, if the same is allowed it will help to decide the question in controversy between the parties on merits finally. Due to the said reasons, they prayed for condoning delay caused in filing written statement on record.

3] On the other hand, it is submitted by the plaintiff that the application is not true and legal. The grounds shown for delay are not genuine. Hence, prayed for rejection of the same.

4] Read the application and say. Gone through the record. Heard both. Perusal of record shows that vide Exh.09 the defendant No. 5 served on 20.11.2015 and since then he has to file written statement within stipulated period. Furthermore, the defendant Nos.6 to 10 appeared in the suit on 10.08.2016 and since then they have also file written

statement on record within stipulated period. But, they didn't do so.

5] It is to be noted that, for deciding the suit on merits it is necessary to give opportunity to the defendant Nos.5 to 10 of contenting the suit by filing their written statement. On perusal of record it is seen that along with written statement defendant Nos.5 to 10 also filed counter-claim in the instant matter. According to them they are also having share in the suit properties. As such, the rights of defendant Nos.5 to 10 involved in the suit properties. In the suit for partition every co-parcener is necessary party to the suit.

6] It is settled law that, period mentioned under order VIII Rule 1 of the C.P.C. is directory and not mandatory. The application also supported by an affidavit. It is true that a considerable delay has been caused in filing written statement by the defendant Nos.5 to 10. However, said delay can be condoned by saddling costs and only on the said ground instant application cannot be rejected. Thus, considering supra facts and circumstances, present application needs to be allowed subject to costs in the interest of justice in the interest of justice. Hence, I pass the following order :

### **ORDER**

- 1] The application (Exh.44) is allowed subject to payment of costs of Rs.1,000/- (Rs. One Thousand only), out of which Rs.500/- to be paid to the plaintiff and remaining amount be deposited with Taluka Legal Service Authority, Sinnar within the period of one month.
- 2] On payment of costs, no written statement order passed against defendant Nos.5 to 10 stands set-aside and they are permitted to file written statement on record.

3] Both parties to bear their own costs.

Date : 10/10/2017.

Place : Sinnar.

Sd/---

(S.S.Mahale)

Jt. Civil Judge (J.D.) Sinnar.