



COMMON ORDER BELOW EXH.16 AND 18

The present applications are moved by the Ld. Advocate for defendant No.3 for setting aside No Written Statement order dated 24/09/2021 and for condonation of delay in filing of written statement within stipulated time before the court.

02 I have perused the applications of Ld. Advocate for defendant No.3. He contended that filing of written statement within stipulated time was not possible due to unavailability of required documents. It is further submitted by him that due to Covid lock down period and notification of Hon'ble Supreme Court regarding extension of limitation period, it is not possible for him to take appropriate steps in the present matter. As per his averments, delay caused by him is not intentional. Hence, he prayed for setting aside No Written statement order and condonation of delay caused in filing written statement.

03 The Ld. Advocate for the plaintiff filed his say on the over leaf of the applications and contended that delay caused by the defendant No.3 is intentional and there is no sufficient reason to condone the delay caused by the defendants for filing written statement.

04 It appears from the record that the present suit is filed for partition and perpetual injunction. The defendants were appeared in the present suit on 06/08/2019. However, they did not file written statement within stipulated period. As per Order VIII Rule 1 of the Code of Civil Procedure, 1908, the defendant shall present a written statement of his defence within thirty days from the date of service of

summons and such time shall not be more than ninety days in case of sufficient reasons provided for the same. It is settled position of law that the provisions under Order VIII Rule 1 are not mandatory in nature and court can allow further time if sufficient reasons are put forth by the defendant for such delay in filing written statement.

05 It is apparent on face of record that there is delay in filing written statement within stipulated period despite of service of summons. Section 5 of the Limitation Act, 1963 provides for extension of prescribed period in certain cases if the applicant satisfies the court that he had sufficient cause for not preferring the application within prescribed time. In the present case, the defendants contended through their application that such delay is not intentional as it is caused due to Covid lock down period and it was not possible for them to collect essential documents. He also contended that the Hon'ble Supreme Court also extended limitation period in Covid pandemic. The present suit is filed for partition of suit properties in which interest of both the plaintiffs and defendants are involved. Considering the contents of application and circumstances of the case, it is necessary to give opportunity to the defendants for proceeding against the plaintiffs to arrive at concrete conclusion. It is just and proper to allow the defendants to defend the said suit by filing their written statement and fair opportunity also needs to be given to both the parties. As far as the delay in filing written statement is concerned, it can be compensated through costs. Accordingly, I am inclined to pass following order :

ORDER

- 1) Applications at Exh.16 and 18 are allowed subject to costs of Rs.600/-

- 2) The No Written Statement order dated 24/09/2021 be set aside.
- 3) The delay in filing written statement is condoned.
- 4) Written statement be recorded after payment of costs.

Date: 12/01/2023

(S. G. Kuvalekar)
Jt. Civil Judge, Jr. Division
Igatpuri.