

ORDER BELOW EXH.21 IN RCS NO.545/2022

1] The present Application is preferred by the Defendant No.2 praying that, the no written statement and say order passed against him be set aside and written statement and say be taken on record.

2] *Vide* the present application, the Defendant No.2 has submitted that, he is unwell. That, as necessary documents could not be obtained within time, the written statement and say could not be filed on time. That, the case pertains to immovable property. That, delay is not deliberate and in order to decide the matter on merits, it is necessary that Defendant be allowed to file his written statement. Hence, it is prayed that, the present application be allowed. Affidavit in support of the present application is filed at Exhibit 22.

3] The present Application is objected by the Ld. Advocate for the Plaintiff by submitting that application filed by Defendant No.2 is at belated stage. Therefore, he prayed that the present application kindly be rejected.

4] Heard. Perused record.

5] It appears that, summons was served on Defendant No.2 and he appeared on 25.08.2023. It appears that, the matter was pending for written statement of the Defendant. The impugned order was passed on 07.10.2023. After lapse of almost two months, the present application along with copy of the written statement is preferred. It appears that, the period of 30 days from the date of service of summons, for filing written statement, as stated under Order 8 Rule 1 of the Code of Civil Procedure (Bombay Amendment) has lapsed.

6] However, the nature of the suit is considered. The suit is filed for partition and separate possession and mesne profit . Hence, considering the nature of the suit, and in order to decide the matter on merits, and in view of the principle of *audi alterum partem* of natural justice, it appears necessary that the Defendant No.2 be given an opportunity to put up his defence. In order to reflect his bonafides, he has also submitted a copy of written statement and Affidavit. Considering the delay, costs will be imposed. In these circumstances,

ORDER

- 1] Application is allowed subject to payment of costs of Rs.100/- (Rupees One Hundred Only) payable to the Plaintiff.
- 2] Upon payment of costs, written statement and say shall be taken on record.
- 3] Application is accordingly disposed off.
- 4] Costs on Applicant.

Sd/-

Date : 07/12/2023.

(Smt. P .S.G.Chalkar)
Jt.Civil Judge Junior Division,
Tuljapur-Osmanabad