

Regular Civil Suit No.23/2016
Mira & ors. / State & ors.
CNR No. MHOS060004112016

Order Below Exh.70

1. The defendant No.3 has made this application for treating his say vide exhibit 35 to the interim application as the written statement of the suit by setting aside the no written statement order passed against him.

The contentions of the application in short are as follows:-

2. The defendant No.3 has filed his say to the interim application vide exhibit 35 on 14.10.2016. He could not file the written statement within stipulated period due to unavailability of documents necessary for the filing of the written statement. Meanwhile, the learned counsel Shri. Kandharkar representing him passed away. To decide the suit on merits his written statement has to come on record. Therefore, the present application.

3. The plaintiff resisted the application and claimed its rejection by filing her detail say vide exhibit 73. According to her, the application of the defendant No.3 for setting aside the no written statement order does not disclose the clarification/reason for the delay caused. Similarly, she has claimed the rejection of the application contending that there is no provision for treating the say of interim application as the written statement by setting aside no written statement order.

4. The defendant No.3 prayed for treating the contentions of the application as his oral argument. The plaintiff failed to submit oral arguments even after grant of sufficient opportunity. Therefore, her say is treated as her argument.

5. Admittedly, the say to exhibit 5 is filed by the defendant No.3 on 14.10.2016 vide exhibit 35. Thereafter, the matter proceeded. Right now, the matter is fixed for further evidence of the plaintiff. The defendant No.3 has cross-examined the witness No.1 of the plaintiff. The matter is pending for passing orders on the application made by the plaintiff vide exhibit 72 for issuing of witness summons.

6. The suit is for perpetual injunction and mandatory injunction. The defence of the defendant No.3 would be helpful in the final adjudication of the real controversy between the parties. The say of the defendant No.3 is already on record. No new facts would come on record. The defendant No.3 ought to have been more careful.

7. The demise of his learned counsel was not in the control of the defendant No.3. So also the pandemic of Covid-19 which proceeded was a hurdle for the defendant No.3 to reach to the court. Now he intends to bring his defence on the record in the form of written statement which is already on record but in the form of say to the interim application. I feel the plaintiff would not suffer any loss if the written statement of the

defendant No.3 is brought on record. Thus, to decide the dispute between the parties on merits, the application may be granted. But to remind the defendant No.3 about his failure to remain cautious and take steps to bring his written statement on record, some costs has to be imposed upon him. Hence, in view of above discussion, I feel following order would suffice the purpose:-

ORDER

1. The application is allowed subject to payment of costs of Rs. 300/- (Rs. three hundred only) to be credited to the State forthwith.

2. Parties to note.

Date : 19/11/2022

(S. A. Kanshide)
Jt. Civil Judge Senior Division,
Omerga.

CERTIFICATE

I affirm that, the contents of this P.D.F.file judgment/order are same, word to word, as per the original Judgment/Order.

Name of Stenographer :	L.S.Patil
Court Name :	Jt. Civil Judge, S.D. Omerga.
Date :	19.11.2022
Order signed by the Presiding Officer on :	19.11.2022
Order uploaded on :	21.11.2022