

ORDER BELOW EXHIBIT 81

This is an application by the Defendant No. 5 seeking setting aside of order proceeding the present suit without his written statement. It is the case of defendant No.5 that he reside out of village and therefore could not contact his advocate. It is also the case of the defendant No.5 that he could not collect necessary document required to file his written statement and therefore, he failed to file his written statement resultant order proceeding suit without his written statement was passed on 21.02.2019. He stated that he has right in a suit property and if present application is not allowed, he would suffer irreparable loss which cannot be compensate in terms of money hence, he prayed to allow the application by setting aside the order dated 21.02.2019.

02. The plaintiffs have strongly objected the application vide their say on back leaf of the application. It is submitted on behalf of the plaintiffs that the contention of the application is not just and proper. In the year 2019 order was passed proceeding the suit without his written statement. Inspite of having knowledge and appearing, defendant No.5 has delayed filing his written statement in order to prolong the present matter. Hence, he prayed to reject the application.

03. Perused the record and proceeding. The defedant No.5 appeared on 23.11.2018 vide Exh.64. As he failed in filing his written statement within the prescribed time limit, the suit was proceeded without his written statement by order dated 21.02.2019.

Thereafter, the defendant No.5 has filed the present application on 17.02.2023 i.e. almost after lapse of several years.

04. It is submitted on behalf of the Defendant No.5 that he use to live out of village and therefore could not contact his advocate. He could not collect necessary document required to file his written statement within time. For the reason mentioned above, Defendant No.5 could not appeared and could not filed his written statement on due date resultant suit proceeded without his written statement. From the perusal of application it appears that the nature of the suit deems it necessary to bring forth necessary document which may take time to get. The reason provided by the Defendant No.5 that he could not filed his written statement due to unavailability of necessary document is condonable.

05. Moreover, it would be necessary to note that pleadings of both the parties in a suit play a major role in determining the real question of controversy between the parties. The written statement of the defendant No.5 would serve the purpose of his defence and if it is not considered, it would deny him to contest the present suit on merits. Therefore, in order to adjudicate the suit on merits, the delay could be condoned and the defendant No.5 deserve a second chance.

06. However, due to the lapse of time, the plaintiffs have suffered inconvenience. The state machinery also had to expend more on litigation. Now due to the inactivity of the defendant No.5 the stages have to be revised. Hence, this inconvenience could be compensated by imposing costs on him. Hence, I proceed to pass following order:

ORDER

1.	The application at Exh.81 is allowed subject to cost of Rs. 1,000/- (One Thousand Rupees Only) to be paid by defendant No.5 to the plaintiffs collectively. The cost shall be paid by the defendant No.5 on or before next date, in case of failure, the application will stand rejected.
2.	The written statement of defendant No.5 shall only be taken on record only after compliance of clause (1) of this order.

Date: 17-03-2023

(Husna R. Khan)
2nd Jt. Civil Judge, Junior Division,
Bhoom

Certificate

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

Name of Stenographer	...	N. V. Koli Stenographer Grade-3
Court	...	2 nd Jt.CJJD & JMFC Bhoom
Date	...	17-03-2023
Order signed by the Presiding Officer on	...	17-03-2023
Order uploaded on	...	20-03-2023