

ORDER BELOW EXHIBIT 40 IN RCS NO. 04/2014

This is an application filed by defendants No. 1a to 1d for setting aside no written statement order and permission to file written statement beyond the stipulated period.

[2] It is contended by defendants No. 1a to 1d that during the pendency of the suit defendant No. 1 died. The present applicants appeared through their advocate, but could not file written statement within stipulated time as some important documents could not be obtained. There is a delay of 07 months and 21 days. But it is necessary to allow defendants No. 1a to 1d to file WS on record. Hence, the application. Per contra the plaintiff strongly resisted the application by filing say. It is his contention that the delay is unexplained and heavy costs be imposed.

[3] Heard the learned advocate for defendants No. 1a to 1d and the plaintiff. Perused the application, say filed and the record of the case.

[4] The present suit is filed for declaration and perpetual injunction. It is matter of record that defendants No. 1a to 1d were duly served by suit summons on 27/10/2015 and they had appeared through their advocate. It is mater of fact that there is delay of 7 months and 21 days in filing of WS. But, considering the fact that the suit if for declaration and perpetual injunction and the rights of both the plaintiff and the defendants are involved, it is necessary to give an opportunity to them to put forth their case on merits. It is a principal of natural justice that both the parties should have an opportunity to contest their case on merits. Therefore, the application is liable to be allowed. However, considering the delay of 7 months, it is necessary to impose appropriate costs on defendants No. 1a to 1d to compensate the plaintiff. Hence, I proceed to pass the following order.

ORDER

The application is allowed.

The no written statement order dated 05/01/2018 is set-aside and defendants No. 1a to 1d are allowed to file their WS on record subject to payment of costs of Rs. 500/- to the plaintiff.

Date : 26/11/2018
Place : Ghodegaon

Bhanupratap Chouhan
Judicial Magistrate First Class