

ORDER BELOW EXHIBIT 23 IN RCS NO. 120/2016

(Passed on 05/02/2018)

This is an application by defendants No. 1 for setting aside no written statement order and permission to file written statement beyond the stipulated time prescribed under the Code of Civil Procedure (for short 'the C.P.C.')

[2] It is contended by defendant No. 1 that he could not obtain some important documents related to the suit due to some family problems. It is contended that there is delay of 275 days in filing WS. Hence, it is prayed that the no written statement order be set aside and he be allowed to file WS on record. Per contra, the plaintiffs strongly resisted the application by filing their say. It is contended by the plaintiffs that no plausible explanation is put forth by the applicants to explain the delay. Hence, it is prayed that the application be rejected and in the alternative costs of ₹ 5,000/- be imposed.

[3] Heard the learned advocates for the applicants and the learned advocate for the plaintiffs at length. Perused the record of the case.

[4] The present suit is for injunction. It is a matter of fact that there is delay by the applicants in filing WS within stipulated time and no WS order is passed against them. It is the principle of natural justice that both the parties must be given an opportunity of being heard. It is necessary that both the parties should have an equal opportunity to put up their case before the court to decide the

case on merits. The legal rights of both the parties are involved in the present suit and needs to be adjudicated on merits. For that purpose, rival pleadings are necessary. The reason for not filing the written statement within time is supported by an affidavit. In view of the principles of law aforementioned it is necessary to give the applicant opportunity to file written statement. Thus the application is liable to be allowed. The delay can be compensated by imposing costs on the applicants. Hence, I pass the following order-

ORDER

The application is allowed.

The no written statement order passed against defendant No. 1 is set aside.

Defendant No. 1 is allowed to file his WS on record subject to payment of costs of ₹ 500 to the plaintiffs.

Date : 05/02/2018
Place : Ghodegaon

Bhanupratap Chouhan
Jt. Civil Judge Junior Division