

R.C.S. NO.122/2022
Prasad Balkrushna Bhalerao
Vs
Hiraman Bhimaji Bhalerao

ORDER BELOW EXH. NO. 27 AND 29

The defendant No.2, 3, 4 and 6 have filed these applications for setting aside 'No written statement' order passed against them and condonation of delay for filing their written statement on record.

2. The Ld. advocate for defendant No.2, 3, 4 and 6 submitted that on 15/07/2022 summons was duly served to defendants. On 08/11/2022 defendants have appointed their advocate but he was suffering from kidney disease. Moreover, the defendant No.2 was undergoing his eye treatment and for the same defendant No.3 used to accompany him in the hospital. Further the defendant No.6 is an old age person. The Ld. advocate for the defendants further submitted that due to aforesaid reasons the defendants could not file their written statement within time, therefore, 'No written statement' order was passed against the them. He further submitted that the delay is not intentional. Therefore, prayed to set aside 'No written statement' passed against them and condone the delay in filing their written statement.

3. The Ld. advocate for the plaintiffs have filed their say overleaf and strongly opposed the present applications. He submitted that the present applications are false and frivolous. The defendants have not filed any medical certificate to support their contention. Therefore, prayed to reject the present applications.

4. Perused applications and say filled by the plaintiff. Heard both sides.

5. In view of the provision of Order VIII Rule 1 of the Code of Civil Procedure, the defendants were duty-bound to submit their written statement within a stipulated period of 90 days from the date of service of summons. Further on perusal of record it appears that there is nowhere on Exh.1 it appears that 'No written statement' order was passed against defendants. The defendants have submitted that on 13/09/2022 'No written statement' order was passed against them but on perusal of record it clearly appears that on 13/09/2022 the order has been passed to proceed the suit exparte against defendants. It clearly shows non application of mind while drafting application at Exh.27 as well as while giving say on it. It also shows that the advocate of both the sides are not well verse with their own brief. The filing such type of application is nothing but wasting judicial time of the Court. The application for setting aside 'No written statement' order would not be maintainable when there is no such 'No written statement' order passed against defendants.

6. As per order dated 13/09/2022 the suit has been proceeded exparte against the present defendants. The defendants have not set aside the said ex-parte order dated 13/09/2022. In such circumstances, without setting aside ex-parte order dated 13/09/2022 the application for condonation of delay is not maintainable.

7. Considering the facts and circumstances of the matter at hand, and the reasons mentioned above I think it would not be

appropriate to allow the present applications filed by the defendants.
Hence, I pass the following order.

O R D E R

The applications at Exh.27 and 29 are rejected.

Sd/-

(Sagar S. Mohite)

2nd Jt. C. J. J. D., Ghodegaon,
Dist. Pune

Dt.12/03/2024
Ghodegaon

CERTIFICATE

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

Name of the Court	: Shri. Sagar. S. Mohite, 2 nd Jt. C.J.J.D. and J.M.F.C., Ghodegaon, Dist. Pune.
Name of the Steno	: J. S. Kaite, Steno Grade - III.
Judgment date	: 12/03/2024.
Judgment signed by P.O. on	: 16/03/2024.
Judgment uploaded on	: 16/03/2024.