



RCS No.207/2022
Sahadu Mahadu Bhangе
Vs
Baburao Changdev Bhangе

COMMON ORDER BELOW EXH. 13 AND 14

These applications are filed by defendant No.1 to 3 for condonation of delay and to set aside “No written statement” order dated 18/01/2023 passed against them.

2. Heard both sides. Considered their submissions.

3. The Ld. advocate for defendants submitted that the summons was duly served to the defendants. On 11/10/2022 the defendants were appeared before Court and filed Vakilpatra on record. He further submitted that the essential, old and necessary documents which are related to suit property were not available with the defendants. They required time for obtaining said documents from Tahasildar Office, Ambegaon. Hence, they could not file written statement within limitation. Therefore, on 18/01/2023 ‘No written statement order’ was passed against defendants.

4. He further submitted that the present suit is for partition and declaration. Therefore, it is necessary to file written statement in the interest of justice and to decide the suit on merit. If written statement is read and recorded then no prejudice will be caused to the plaintiffs. On the other hand, defendants will suffer irreparable loss. There was 1 year 5 months and 12 days delay for filing written statement. Hence, he prayed to allow the applications.

5. The Ld. advocate for the plaintiffs have filed say. He submitted that no written statement order was passed against defendants on 18/01/2023. Defendants

have knowledge of the said suit. Despite that they did not file their written statement. After that defendants were absent. On 11/12/2023 the plaintiff has filed evidence affidavit. After that on 16/04/2024 "No Cross" order was passed against defendants. In these circumstances, defendants are intentionally trying to prolong the matter. Hence, he prayed to reject the application and if the Court is of the opinion to allow the applications then allow the applications by imposing costs of Rs.10,000/-.

6. Perused record. It appears from that the suit has filed for partition and declaration. On perusal of the application, it appears that the defendants were unable to collect the necessary and essential documents related to suit property which are required for the trial of suit. Hence, they failed to file their written statement within 90 days from the service of summons. Therefore, 'No written statement order' dated 18/01/2023 was passed against defendants. The reasons mentioned in the applications seems to be genuine. There was 1 year 5 months and 12 days delay for filing written statement. The delay appears to be unintentional.

7. Further, 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. Admittedly there was near about one year delay in filing the written statement. However, the suit claim is for partition and declaration. The written statement is a preliminary defense of the defendants, where the defendants raises their objection to the plaintiff's claims and puts forth their version of events. Therefore, it is necessary for deciding the suit on merit.

8. If the application is rejected, the defendant will not get the opportunity to put his case on record. Considering the facts and circumstances of the suit in hand, and the reasons mentioned above, also in order to give fair opportunity of hearing, application needs to be allowed. The delay of 1 year 5 months and 12 days in filing the written statement and setting aside "No written statement order" can be

compensated in terms of money. Accordingly, in the interest of justice and for deciding the suit on merit, I pass following order.

ORDER

- 1) The applications at Exh.13 and 14 are allowed subject to a cost of Rs.1200/- be paid to the plaintiffs.
- 2) The defendants are directed to pay above mentioned cost to the plaintiffs on or before next date.
- 3) The 'No written statement order' dated 18/01/2023 passed against defendants is hereby set aside.
- 4) The written statement of the defendants is taken on record after payment of the above cost.

Sd/-

(Sneha Sunil Pulujkar)

2nd Jt. Civil Judge Juinor Division,
Ghodegaon, Dist. Pune.

Date : 13/03/2025

C E R T I F I C A T E

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

Name of the Court	: Smt. Sneha Sunil Pulujkar, 2 nd Jt. Civil Judge, Junior Division, Ghodegaon, Dist. Pune.
Name of the Steno	: J. S. Kaite, Steno Grade - III.
Judgment date	: 13/03/2025
Judgment signed by P.O. on	: 13/03/2025
Judgment uploaded on	: 13/03/2025