

CNR No.MHRG090002372020 R.C.S.No.35/2020



**Tukaram Sakharam Kode Vs. Madhukar  
Namdev Kode @ Madhukar Govind  
Kode and ors. And 04**

**ORDER BELOW EXH. NO. 36**

Present application filed by the defendant No.1 for condonation of delay for filing written statement.

2. The Advocate for plaintiff objected for the same.

3. Perused the record. Record shows that defendant No.1 has served with summons on 04/01/2023 and he has appeared before court through his advocate on 13/01/2023. However, he failed to file his written statement within prescribed time limit.

4 It is well settled that the provisions of O-VIII R-1 of Code Of Civil Procedure are directory and not mandatory and it can be stretched in rare and exceptional cases. Defendant has filed this application along with his written statement. It is stated that the delay caused is not intentional or deliberate. He could not file written statement due to some family problems further he could not approached the Advocate.

5. The present suit is for removal of encroachment and injunction. The defendant No.1 came with his written statement on

09/05/2024. If the opportunity is not granted to the defendant No.1 to protest the suit claim, irreparable loss will be caused to him. On the other hand no prejudice would be caused to the plaintiff, if written statement of defendant is taken on record.

06. Therefore, it is necessary to condoned the delay in the interest of justice for the proper adjudication of the suit. At the same time it is necessary to compensate the plaintiff for the delay caused due to defendant. Hence, following order is passed to meet the ends of justice.

**ORDER**

1. Application is allowed.
2. Delay in filling Written statement is condoned subject to costs of Rs.500/- payable by the defendant No.1 to the plaintiff.
3. After payment of costs, written statement of defendant shall form part of the record.

Date : 21/08/2024.

(Smt. M. C. Hasge)  
Jt.Civil Judge,J.D., Roha