

Order below Exh. 43 in R.C.S No. 01/2015.

1. This application is given by defendant no.12 for setting aside No written statement order passed against him.

2. According to the above defendant no.12, he did not get necessary documents in time, so he could not file his written statement within stipulated period. He has not intentionally caused the delay. He wants to file his written statement on record and defend the suit. So he has prayed to permit him to file written statement by setting aside No Written statement order.

3. Plaintiff has filed his say and opposed the application. According to him, defendant no.12 has intentionally caused the delay. He has not given explanation of each day of delay. The reason is vague. So, he prayed to reject the application.

4. From the rival contention of both the sides, following points arise for determination, to which I have recorded my findings for the reasons given below.

<u>Points</u>	<u>Findings</u>
1. Whether No written statement order passed against defendant no.12 be set aside ?	In the affirmative.
2. What order ?	As per final order.

REASONS

5. Perused the application and say. Learned advocate Mr. Sable on behalf of the above defendant submitted that, the above defendant did not get necessary documents, so he could not file written statement within stipulated period. He has intentionally not caused the delay. Delay may be condoned and No written statement order may be set aside. So he prayed to allow the application.

6. On the other hand learned advocate Mr. A. M. Chandorkar for plaintiff submitted that, defendant no.12 has intentionally caused the delay. He has not given proper reason and explanation for the delay. So he prayed to reject the application.

As to points no. 1 and 2 :

7. On perusal of record, it is seen that the suit is for declaration and perpetual injunction. Suit summons was issued to defendants. Report at exh.09 shows that suit summons was duly served to defendant no.12 on 23/07/2015. Accordingly defendant no.12 appeared on 29/07/2015 but he failed to file his written statement on record within stipulated time. So on 05/04/2016 no written statement order was passed against him.

8. As provided in Order 8 Rule 1 of the Code of Civil Procedure, defendant shall within 30 days from the date of service of summons on him, present written statement of his defence. Provided that where the defendant fails to file the written statement within the said period of 30 days, he shall be allowed to file the same on such other days, as may be specify by the Court, for reasons to be recorded in writing, but which shall not be later then 90 days from the date of service of summons.

9. Defendant no.12 has put forth the reason that, he did not get necessary documents in time, he has not shown as to for which documents he had applied for. He has not produced documentary evidence in support of his contention. Though it is so, the dispute between the parties needs to be resolved on merit. Every party must be given an opportunity of fair trial. Refusal to accept the written statement will amount to denial of justice and it will create multiplicity of

proceedings. In order to adjudicate the dispute, written statement of this defendant is necessary on record.

10. In the case in hand, according to defendant no.12 he has caused delay of 02 yeas and 03 months. Here it is pertinent to note that, though the delay is unreasonable, in order to adjudicate the dispute once and for all, it needs to be condoned. Thus, the application deserves to be allowed. The inconvenience and delay caused to plaintiff can be compensated in money value. Accordingly, point No. 1 is answered in the affirmative and in answer to point No. 2, following order is passed.

Order

1. Application at Exh. 43 is allowed.
2. No Written Statement order passed against defendant no.12 is set aside. He is permitted to file his written statement on record.
3. He shall pay costs of Rs. 500/- (Rs. Five hundred) to plaintiff.

Place : Mahad.

(R. R. Patil)

Date : 04-10-2019.

Civil Judge Junior Division, Mahad