

**ORDER BELOW EXH. 24 IN R.C.S. No. 55 OF 2017**

The defendant no. 2 to 4 have filed present application for condonation of delay in filing of written statement.

2) The defendant no. 2 to 4 contended that despite service of summons on 19/08/2017 they could not file written statement within a period of limitation and therefore delay of 41 days is caused for filling say and written statement. That delay is caused due to non availability of necessary documents and they could not contact their advocate. Therefore delay caused in filling of the say and written statement. Further they contended that if delay is not condoned irreparable loss is likely to be caused. The trial of the suit is yet to be commenced. Therefore in the interests of natural justice they should be given opportunity to file written statement to contest suit on merit. Therefore they prayed for condonation of 41 days of delay caused in non filing of written statement.

3) The plaintiff resisted application Exh. 24 by filling his say below Exh. 27 and resisted the application on the ground that the defendants have file present application only to cause mental harassment in the plaintiff. The defendants have deliberately caused delay. Therefore heavy costs may be imposed on defendants.

4) Perused the application alongwith affidavit at Exh. 25 and say filed by the plaintiff. So also perused record of the suit.

5) Heard both side.

6) On perusal of the record, it is apparent that the defendant no.

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2 to 4 could not file say and written statement within period of limitation. Therefore delay of 41 days is caused in filing say and written statement.

7) It is observed that the present suit is filed for partition and mandatory injunction and to decide the suit on merits an opportunity needs to be given to the defendant no. 2 to 4 to put forth their defence in the interests of natural justice which will ultimately help in adjudicating the matter on merit.

However the hardship suffered by the plaintiff can be compensated by imposing costs on the defendant no. 2 to 4.

Accordingly, the following order is passed:-

### **ORDER**

1) The application (Exh. 24) is hereby allowed and delay of 41 days caused in filing written statement is condoned subject to payment of costs of Rs. 2000/- in toto defendant to be paid by the defendant no. 2 to 4 to the plaintiff on or before next date.

2) On payment of costs of Rs. 2000/- the written statement be taken on record. If the defendant no. 2 to 4 failed to deposit costs of Rs. 2000/- on or before next date, no say and written statement order will be passed.

Mahad.  
Date: 19.06.2018

(V. R. Doifode)  
Jt. C.J.J.D., Mahad.