

**ORDER PASSED BELOW EXH. 31 IN R.C.S. No. 69 OF 2018**

Perused application Exh.31 and affidavit in support thereon and ready filed thereon at exh.33 with. Perused record.

2) Heard Ld. Adv. Shri Mangesh Mohire for the defendant no.1(a) and Ld. Adv. Mrs. Megha Mirgal for the plaintiff.

3) Ld. Adv. Shri. Mangesh Mohire for the defendant no.01(a) submitted that, the summons of the suit against the defendant no.01 (a) under order 5 rule 17 of the C.P.C. was not properly served therefore the defendant no.01(a) could not file her written statement. The Ld. Adv. Further submitted that, the defendant no.01(a) being illiterate lady could not approach her advocate with necessary documents, therefore she could not file written statement within limitation period, therefore delay of 4 months and 10 days is caused to file written statement. Delay in filling the written statement is not deliberate therefore the same to be condoned. Ld. Adv. Mr. Mohire further submitted that, the present defendant no.01(a) is only contesting defendant and other defendants have admitted the suit of the plaintiff therefore to decide the suit on merit and in the interest of the justice, an opportunity needs to be granted to file the written statement. Therefore he prayed to condon the delay and to set-aside the ex-parte order dated 29/06/2019.

4) The Ld. Adv. Mrs. Mirgal for for the plaintiff submitted that, the defendant no.01(a) was duly served, however she could not appear and file her written statement within the period of

limitation as provided under the C.P.C. therefore the application is filed only to delay proceeding of suit hence, she prayed to reject the application.

5) On considering rival submission of the both side and on perusal record it is noted that the defendant no.01(a) was served under provision of order 5 rule 17 and she could not appear before the Court, therefore on 29/06/2019 ex-parte order was passed against the defendant no.01(a). Record shows that, suit is admitted by the defendant no.02 and 03 vide exh.17. However to decide the suit on merit an opportunity needs to be granted to applicant who appears to be only contesting defendant, hence the application filed by the defendant no.01(a) is labile to be allow. Hence, following order :-

**ORDER**

- 1) The application (Exh. 31) is allowed.
- 2) Delay of 4 months and 10 days is condoned subject to costs of Rs. 500/-, on payment of costs Rs. 500/-, ex-parte order dated 29/06/2019 is set-aside.
- 3) The costs of Rs. 500/- be paid by the defendant No.01(a) on or before the next date.

Mahad.  
Date: 08/03/2021



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