Order Below Exh. 24 in RCS No. 97/2017.

1. This is an application filed by defendants no.01, 02 & 04 for setting aside no written statement and ex parte orders respectively, passed against them.

2. According to defendants no.01, 02 & 04, they are aged. Defendants no.01 & 02 suffer from illness. They could not get necessary documents in time so they could not file their written statement within limitation period and defendant no.04 could not appear in the proceeding. Now defendants no.01 & 02 want to file their written statement on record and defend the suit defendant no.04 want to appear and defend the claim of plaintiff. So they have prayed to set aside no written statement and ex parte orders respectively, passed against them by allowing the application.

3. Plaintiff has filed his say and opposed the application. According to him, reasons mentioned in the application are not proper and satisfactory. Defendants have intentionally avoided to appear and file their written statement. They are prolonging the case. No proof in support of their contention has been filed by defendants no.01, 02 & 04. So he prayed to reject the application.

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

Points	Findings
1. Whether no written statement order passed against defendants no.01 & 02 be set aside?	In the affirmative.
2. Whether ex parte order passed against defendant no.04 be set aside?	In the affirmative.
3. What order ?	As per final order.

R E A S O N S

5. Perused the application and say. Learned advocate Mr. K. M. Pawar on behalf of defendants no.01, 02 & 04 submitted that, defendants have not intentionally caused delay. They are aged. They could not get necessary documents in time. So defendants no.01 & 02 could not file written statement within time and defendant no.04 could not appear. Now, written statement has been prepared. By setting aside no written statement and ex parte orders respectively, passed against them it may be taken on record. So he prayed to allow the application.

6. On the other hand learned advocate Mr. B. P. Salunkhe argued that, defendants have not given acceptable reason. They are protracting the trial. So he prayed to reject the application.

As to points no. 01 to 03 :

7. On perusal of record, it is seen that the suit is for specific performance and perpetual injunction. Service of suit summons to defendants was made on 04/01/2018. Accordingly, defendants no.01 to 03 appeared in the proceeding on 16/01/2018. Defendant no.04 did not appear in the proceeding. Defendants no.01 to 03 did not file their written statement in stipulated time. Hence on 05/07/2018 no written statement order was passed against them and ex parte order was passed against defendant no.04. Now defendants no.01 & 02 want to file their written statement on record and defendant no.04 want to appear in the proceeding.

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. Defendants no.01, 02 & 04 have put forth reason that they did not get necessary documents in time because of which she could not file written statement within limitation period. Significant thing is that, they have not specifically stated as to which documents they tried to get. There is nothing on record to show that they had applied for copies of the so called documents. Similarly there is no evidence of their illness. However, the dispute between the parties needs to be resolved on merit. Every party must be given an opportunity to be heard. In order to achieve fair trial and to resolve the dispute once and for all, the written statement needs to be accepted. Refusal to accept the written statement would amount to denial of justice and it will create multiplicity of proceedings.

10. In the case in hand, defendants no.01 & 02 have caused delay of 90 days. Similarly defendant no.04 has not caused too much delay in appearing in the proceeding. Suit is in its primary stage. The delay is not unreasonable and fatal. Hence in order to adjudicate the dispute properly, the application deserve to be allowed. The inconvenience and delay caused to plaintiff can be compensated in money value. Accordingly, points no.01 and 02 are answered in affirmative and in answer to point no.03, following order is passed.

Order

1. Application at Exh. 24 is allowed.

2. No written statement order passed against defendants no,01 & 02 is set aside.

3. Ex parte order passed against defendant no.04 is set aside.

4. Defendants no.01, 02 & 04, each shall pay costs of Rs. 250/- (Rs. Two hundred Fifty) to plaintiff.

Place : Mahad.
Date : 16/11/2018.

(R.R. Patil)
Civil Judge Junior Division,
Mahad