

**Julekha Kurrukar and ors Vs.
Sarif Rahatwilkar and ors.**

ORDER BELOW EXHIBIT 22 IN RCS NO. 104/2016
(Decided on 20/06/2017)

The defendant No.62 presented this application for setting aside the 'No W.S.' order passed against him below Exh. 1 on 09/03/2017. Perused the application and say of the plaintiff. Heard both the parties.

02. The defendant No. 62 submitted that after service of summons he had appeared before this Court through his advocate on 20/10/2016. He could not file the written statement and say within stipulated period of time as he could not procure the necessary documents regarding suit property. He submitted that he had gone out of station for his business purpose. Subsequently, the 'No W.S.' order was passed against him on 09/03/2017. By this application he prayed for setting aside the 'No W.S.' order passed against him.

03. The plaintiffs filed his say and resisted the application. They contented that the grounds shown in the application are not justified. Further they contented that the defendant No. 62 did not give any satisfactory reason for delay in filing the written statement. Therefore, they prayed for rejection of the application.

04. The defendant No. 62 appeared before this Court on 20/10/2016 vide Exh. 16 through his advocate but failed to file the written statement. Under Order 8 Rule 1 of the Code of Civil

Procedure he was supposed to file the written statement within a period of thirty days from the date of service of summons. There is delay of almost five months in filing the written statement. He provided the reason that he had gone out of station for his business purpose. The ground provided has been supported by the affidavit of the defendant No 62.

05. Though the defendant No. 62 has not given satisfactory reason for filing the written statement after delay of five months it cannot be ignored that the plaintiffs instituted this suit for declaration, partition and perpetual injunction. From the plaint it appears that the plaintiff and the defendant Nos. 1 to 58 are involved in serious property dispute. The defendant No. 62 is the purchaser of the suit property. The plaintiffs claim that the property is ancestral property of them and the defendant Nos. 1 to 58. If the defendant No. 62 is denied an opportunity to put his case before this Court then it will cause severe injustice to him. The right of the defendant No. 62 will be affected if he is denied an opportunity to lead his case. If the opportunity is not given to him to file his say and written statement it will lead to multiplicity of litigation in future.

06. The suit involves the ancestral property of both the parties. Therefore, any decision without hearing the contention of the defendant No. 62 will cause severe injustice to him. In order to decide the suit on merit and in order to adjudicate the rights of both the parties it is necessary to set aside the 'No W.S.' order passed against the defendant No.62. According to me, the delay of five

months in filling the written statement should not strip off the defendant No. 62 to put his case before this Court. At the same time the plaintiffs needs to be saddled with reasonable cost taking into consideration unreasonable delay caused in filling the written statement. In the circumstances I pass the following order.

ORDER

Application is allowed.

'No W.S.' order passed against the defendant No 62 on 09/03/2017 is hereby set aside subject to cost of Rs. 200/- (Rupees Two hundred only) to be paid to the plaintiffs on or before the next date.

After payment of costs the written statement shall be taken on record.

Mangaon.

Date:- 20/06/2017

(G.S. Hange)

Jt. Civil Judge J.D. Mangaon.