



ORDER BELOW EXH.39

- 1) By virtue of this application, defendant no.3 prayed to take their written statement on record by condoning the delay caused to file the same.
- 2) Defendants no.3 by way of present application submitted that, due to some unavoidable circumstances, she was unable to file her written statement on record within stipulated time. She further submitted that, if her written statement is taken on record, it will assist the court to decide the suit on merit. On the above reason, she prayed to allow the application.
- 3) Plaintiff filed his Say below Exh.44 and submitted that, defendant no.3 has not stated any cogent reason for not filing written statement within stipulated time. Delay caused is intentional. On the said reasons, plaintiff prayed to reject the application.
- 4) Heard the arguments. Perused the application and reply thereto as well as various orders passed in the suit. Perusal of record shows that, summons to defendant no.3 was served on 24/07/2023. On 07/11/2024, defendant no.3 appeared in present suit.. Thereafter, time was granted as and when requested by defendant no.3 to file her written statement. However, she failed to file her written statement. She filed present application on 07/11/2024. Thus, there is a delay of about 13 months in filing of the written statement.
- 5) It is worth noticing that, present suit has been filed for injunction & declaration concerning suit property. In my opinion, even though defendant no.3 was apathetic in not conducting the case by filing written statement, she deserves an opportunity to present her defense. If she is permitted to file written

statement, the same will assist the court to decide the controversy between the parties on merit. Moreover, the provision of Order VIII Rule 1 of the Code of Civil Procedure is not mandatory but directory. The strict interpretation of the said provision would defeat the justice.

6) No cogent reasons have been stated by defendant no.3. Further, there is a delay of 13 months. In such circumstances, defendant no.3 can't escape from compensating the plaintiff for causing delay. Therefore, it will be just, legal and proper to impose a cost of Rs.500/- upon defendant no.3 as to compensate the inconvenience caused to plaintiff by not filing written statement within time. Consequently, to decide the present suit on merits and to give an opportunity to the defendant no.3 to present their case by filing written statement, I proceed to pass following order: -

ORDER

- 1] Application is allowed.
- 2] Written Statement of defendant no.3 is taken on record subject to cost of Rs.500/-(Rupees Five Hundred Only) to be paid by them to plaintiff.
- 3] Application is disposed off accordingly.

Place :Shrivardhan
Date :28/01/2026.

(S.K.Shaikh)
Civil Judge Junior Division,
Shrivardhan