

MHRG140009682021



COMMON ORDER BELOW EXH-81 & 83

1. By this common order, I shall dispose of two interconnected applications filed by Defendant Nos. 3/1 to 3/5: namely, Exhibit-81, which seeks to set aside the order directing the suit to proceed without their written statement ('No-WS' order), and Exhibit-83, which seeks condonation of a delay of 2 years and 10 days in filing their written statement.

2. The facts essential for the determination of these applications are that the Plaintiffs have instituted the present suit (RCS No. 121/2021) seeking reliefs of declaration and perpetual injunction concerning the suit properties. Summonses were admittedly served upon the Defendant Nos. 3/1 to 3/5 on 17/11/2021. However, the Defendants failed to file their written statement within the statutory period of 90 days, leading this Court to pass an order directing the suit to proceed without their written statement.

3. The Applicants (Defendant Nos. 3/1 to 3/5) have preferred these applications stating that they are all married women residing permanently at their respective matrimonial homes away

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from the suit village, Kalambusare. They have stated that due to their age and persistent health ailments, they could not immediately travel to the village or visit the revenue offices to secure the old and essential revenue records of the suit properties. Furthermore, they contend that the Plaintiffs had filed Application No. 239 of 2008 before the Sub-Divisional Officer (SDO), Panvel Division, under Section 155 of the Maharashtra Land Revenue Code, 1966. Obtaining certified, authenticated copies of those ancient proceedings took considerable time. Additionally, amicable settlement talks were ongoing between the parties, which consumed substantial time. Consequently, the written statement could not be filed within the 90-day limitation period, resulting in a delay of 2 years and 10 days.

4. The Plaintiffs filed their detailed replies (Say) to both applications at Exhibit-81 and Exhibit-83 on 25/03/2026. The Plaintiffs strongly opposed the applications, labeling them as false, vexatious, and deliberate attempts to obstruct the administration of justice. The Plaintiffs asserted that the Defendants had knowledge of the proceedings but deliberately chose not to appear, thereby showing contempt for the court's process. However, in their reply to Exhibit-81, the Plaintiffs alternatively prayed that if this Court, in the interest of natural justice, deems it fit to allow the application to enable the Defendants to file their defence, the same may be allowed only upon imposition of exemplary costs.

5. I have carefully perused the pleadings and documents on record. It is an admitted position that the summonses were served upon the Applicants on 17/11/2021. The statutory period under Order VIII Rule 1 of the Code of Civil Procedure, 1908 (CPC) mandates filing the written statement within 30 days, extendable up to 90 days. The current applications were filed on 26/02/2024, showing an undisputed delay of 2 years and 10 days.

6. The reasons advanced by the Applicants for this delay include their status as married women living in separate matrimonial homes, physical illness due to age, the geographical distance from village Kalambusare, and the time taken to procure the 2008 SDO revenue dispute records under Section 155 of the MLRC. They have also pointed to active settlement negotiations. Although these reasons, individually, may appear to cover a prolonged period, collectively they explain the logistical and physical impediments faced by the female defendants in organizing their legal defence.

7. The law is well settled that the provisions of Order VIII Rule 1 of the CPC, while couched in mandatory terms, are directory in nature, especially in cases where the procedural delay does not stem from gross negligence or deliberate inaction. The primary objective of the court is to deliver substantive justice on merits rather than terminating valuable rights on technical defaults. In a suit for declaration and perpetual injunction, the title and possessory rights over immovable property are at stake. Deciding such vital issues without a written statement would result in an ex-parte or

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uncontested determination, causing grave and irreversible prejudice to the Applicants.

8. Simultaneously, the court cannot overlook the inconvenience caused to the Plaintiffs, who have had their suit stalled for over two years. The Plaintiffs' alternative plea in their Say to Exhibit-81, suggesting the imposition of costs as a condition for allowance, offers a balanced path. This court is of the opinion that the delay, though long, is not entirely malafide. The inconvenience caused to the Plaintiffs can be adequately compensated in terms of money. By imposing appropriate costs, the scales of justice can be balanced, ensuring that the Plaintiffs are compensated while the Defendants are granted an opportunity to put forth their defence.

9. Consequently, I find that sufficient cause has been made out under Section 5 of the Limitation Act to condone the delay, and it is fit to set aside the 'No-WS' order to meet the ends of justice. Hence, I proceed to pass following order;

ORDER

1. The applications at Exhibit-81 and Exhibit-83 are hereby allowed.
2. The delay of 2 years and 10 days in filing the written statement by Defendant Nos. 3/1 to 3/5 is hereby condoned.

3. The order directing the suit to proceed without the written statement against Defendant Nos. 3/1 to 3/5 is set aside.
4. This order is subject to the payment of costs of Rs. 2,000/- (Rupees Two Thousand Only) by the Defendant Nos. 3/1 to 3/5 to the Plaintiffs, as a condition precedent, to be paid on or before the next date.
5. The Defendant Nos. 3/1 to 3/5 will be permitted to file their written statement on the record on payment of costs amount.

Uran

Date – 24.07.2026

S. P. Wankhade

(Civil Judge J. D. Uran)