

MHRG140003652022



COMMON ORDER ON APPLICATIONS EXH. 31 & 33

1. By this common order, I shall dispose of two interconnected applications, viz., Exhibit-31 and Exhibit-33, filed by Defendant Nos. 2/1 to 2/3. Exhibit-31 is an application under the Code of Civil Procedure, 1908, seeking to set aside the order dated 16/12/2024, whereby the suit was ordered to proceed ex-parte against them. Exhibit-33 is an application seeking condonation of a delay of approximately 128 days in filing their Written Statement (jawab and kaifiyat) and requesting that the same be taken on record.

2. The facts leading to the filing of these applications may be briefly summarized as follows: The Plaintiffs have instituted the present suit against the Defendants seeking a declaration, the cancellation of a registered sale deed of the suit property, and a decree for permanent and temporary injunction. Upon the institution of the suit, summonses were issued to the Defendants. The Applicants/Defendant Nos. 2/1 to 2/3 were served with the summons on 23/08/2024. However, they failed to appear before this Court, resulting in an ex-parte order passed against them on 16/12/2024.

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3. In Exhibit-31 and Exhibit-33, the Applicants have contended that they are illiterate and possess no knowledge of legal proceedings or court procedures. Due to their lack of education and legal ignorance, they could not understand the technicalities and implications of the summons in a timely manner. Consequently, they failed to appear before the Court on the designated date, which led to the ex-parte order dated 16/12/2024. The Applicants further state that there is a delay of about 128 days in presenting their Written Statement. They have now appeared before this Court along with their written statement and argue that if they are not allowed to file their written statement and contest the matter on merits, they will suffer irreparable injury and grave injustice. They assert that the delay was neither deliberate nor intentional, but purely owing to their socio-economic and educational background.

4. The Plaintiffs have strongly resisted both applications by filing their say on 20/03/2026. It is contended by the Plaintiffs that the applications are legally untenable and not maintainable. The Plaintiffs argue that the Applicants have failed to provide a satisfactory, day-to-day explanation for the delay. It is further submitted that in the event this Court is inclined to allow the applications in the interest of natural justice, the Applicants must be penalized with heavy costs to compensate the Plaintiffs for the delay and inconvenience caused.

5. When the matters were called out for hearing, the learned counsel representing the Applicants/Defendants argued in

line with the averments made in the applications, emphasizing the need for a decision on merits. The learned counsel for the Plaintiffs, however, remained absent during oral arguments, and hence, this Court has proceeded to decide the applications based on the material on record and the written say filed by the Plaintiffs.

6. Both these points are interconnected and are therefore discussed together. The record indicates that the Applicants were served with the summons on 23/08/2024. Under Order VIII Rule 1 of the Code of Civil Procedure, 1908, a defendant is required to file their written statement within 30 days of the service of summons, which can be extended up to 90 days for reasons to be recorded. In the present case, the Applicants did not appear, and on 16/12/2024, an order to proceed ex-parte was passed. The present applications, along with the proposed Written Statement, were filed on 28/03/2025. This has resulted in a delay of approximately 128 days beyond the statutory period.

7. The principal ground urged by the Applicants is their illiteracy and complete ignorance of the law. It is a well-settled principle of civil jurisprudence that procedural laws are handmaids of justice and not its mistresses. The primary objective of the Court is to deliver substantial justice on the merits of the case rather than terminating proceedings on technical defaults. Illiteracy and lack of legal awareness are prevailing realities in rural and semi-urban pockets of India, and a rigid, hyper-technical view in such circumstances would defeat the cause of justice.

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8. Under Order IX Rule 7 of the Code of Civil Procedure, 1908, if the defendant appears before the final hearing of the suit and shows good cause for his previous non-appearance, the Court may direct that the ex-parte order be set aside on such terms as to costs or otherwise as it thinks fit. In the present case, the suit has not progressed to the stage of final hearing or evidence. No prejudice will be caused to the Plaintiffs if the Applicants are permitted to contest the suit on merits, as the Plaintiffs can be adequately compensated in terms of money.

9. Conversely, if the applications are rejected, the Applicants will be completely shut out from defending their title and interests over the suit property, which may cause them irreparable loss. Although the Applicants have not provided a minute-by-minute explanation for the delay, their explanation of illiteracy and lack of guidance constitutes 'sufficient cause' within the meaning of the law. However, to balance the equities and compensate the Plaintiffs for the delay, it is appropriate to allow the applications subject to reasonable costs. Consequently, the applications marked as Exhibit-31 and Exhibit-33 deserve to be allowed, subject to costs. Hence, I pass the following order:

ORDER

1. Application Exhibit-31 and Application Exhibit-33 are hereby allowed.

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2. The ex-parte order dated 16/12/2024 passed against Defendant Nos. 2/1 to 2/3 is hereby set aside.
3. The delay of 128 days in filing the Written Statement by Defendant Nos. 2/1 to 2/3 is condoned. The Written Statement filed by them along with the application is ordered to be taken on record.
4. This order is subject to the payment of costs of Rs. 1,000/- (Rupees One Thousand Only) by the Applicants/Defendant Nos. 2/1 to 2/3 to the Plaintiffs, on or before next date.
5. If the cost is not deposited within the stipulated time, this order shall stand automatically vacated without further reference to this Court.

Uran

Date – 31.07.2026

S. P. Wankhade
(Civil Judge J. D. Uran)