

MHRG140003842019



R.C.S. No.76/2019

Order below Exhibit 36

1. This is an application by defendant no.1 praying to set aside no WS order.

2. It is contended by the defendant that, The Defendant was served with summons on 14/05/2019. He had filed his say to the application vide Exhibit-5 on 13/06/2019, but due to inadvertence and oversight he failed to file his WS till 11/08/2019. The Defendant wanted to file a pursis to consider his say as his WS. Meanwhile settlement discussions with the Plaintiff were going on, which caused delay in filing the WS. About 3½ years later, the Plaintiff appointed new counsel and filed an amendment application under Order VI Rule 17 CPC (Exhibit-27) which was allowed on 19/10/2024. Considering both the original and amended plaint, the Defendant wants to file his WS, the delay was not intentional and therefore prayed to set aside no WS order.

3. While plaintiffs have strongly objected this application submitting that, defendant No. 1 filed an application on 19/07/2025 seeking condonation of the long delay in filing their written affidavit and to set aside the Court's 08/09/2021 order to proceed without WS. The Plaintiffs respond that on 05/04/2025 they filed Exhibit-34 arguing the Defendant had no right to file any

WS and that the late applications are made with hindsight. The Plaintiffs submits that after service of summons, the Court passed order of status quo on 11/07/2019. As the Defendant failed to file his WS, no WS order was passed against him on 10/03/2021. An application seeking time by Defendant No. 1 was rejected on 08/09/2021, new vakalatnama was filed on 12/04/2023. Nearly after four years, the Defendant again sought condonation to file his WS. Hence, prayed to reject the application.

4. Perused the application, supporting affidavit, say, documents filed on record.

5. After perusing the records and proceeding, the defendant had appeared in this suit on 13.06.2019, despite of opportunity of more than 6 years he failed to file his WS. It is pertinent to note that, he seems to have file say to the application for temporary injunction. Yet he has missed to file his WS, maybe by mistake. But the defendant was expected to be alert and cautious in the proceedings before Court of law. Yet, considering a fair opportunity I find that the defendant deserves an opportunity to file his WS in the interest of justice and fair trial. But at the same time such huge delay deserves to be compensated. Hence, the order:-

ORDER

- i. The application is allowed subject to depositing cost as per Order below Exh.38

Sd/-

Uran,
Date : 28.01.2026

(M. S. Quazi)
Civil Judge, J.D., Uran