

**Order below Exh. 105 in Regular Civil Suit No. 92/2023**

Through this application, defendant No. 10 to 12 praying to set aside no written statement order and permission to file written statement on record.

02. Perused the application and say filed at exh. 107 by plaintiff. Heard learned advocate Shri. Rohan Metha for defendant No. 10 to 12 and learned advocate Smt. Meghana Mirgal for plaintiff at length.

03. It is submission of learned advocate for defendant No. 10 to 12 that due to illness of defendant No. 11 they could not file the written statement within time. Consequently court was pleased to pass no written statement order. According to defendant No. 10 to 12 they was no ill intention for not filing the written statement in time. They should be given an opportunity to defend the suit. If they are permitted to file written statement on record it will cause no prejudice to plaintiff. As such, prayed to allow the application.

04. On the other hand, it is submission of learned advocate for plaintiff that defendant No. 10 to 12 that the application is not in consonance with the provision of Order 8 Rule 1 of the Civil Procedure Code. The reasons cited in the application is false. Defendant No. 10 to 12 were well aware of day to day proceeding of the suit. They deliberately caused delay to filing written statement.

Reasons cited in the application is not supported by medical certificate. Defendant No. 10 to 12 deliberately for one and another reasons protracting hearing of the suit to deprive plaintiff from justice. Thus prayed to reject the application. In support of submission, learned advocate for plaintiff relied upon the Judgment in the case of *Pathapati Subba Reddy (Died) by LR's and Ors. V/s. The Special Deputy Collector (LA), Special Leave Petition (Civil) No. 31248 of 2018, decided on 08.04.2024.*

05. Given thoughtful considerations rival submissions of the parties. The defendant No. 10 to 12 cited the reason of illness of defendant No. 11 causing delay in filing written statement. The cited reason is not supported by any medical certificate. But for want of medical certificate cited in the application cannot be flatly rejected. Be that it may under the present suit, the plaintiff sought the relief of partition and separate possession of his share in the suit property. Considering relief claimed under the suit, fair opportunity needs to be given to defendant No.10 to 12 to defend plaintiff's claim. Permitting defendant No.10 to 12 to file written statement on record, setting aside no written statement order will cause no prejudice to the plaintiff. On the contrary, the suit will be disposed of on merits putting an end to dispute between the parties.

06. In the Judgment of *Pathapati* cited on behalf of plaintiff, there was inordinate delay of 5659 days in filing

appeal under section 54 of L. A. Act against the Judgment and order in LAR under section 18 of L A Act. Thereby the Hon'ble High Court of Andhra Pradesh dismissed the application of condonation the delay and same was confirmed by Hon'ble Supreme Court. However, in the case in hand the delay was filing in the written statement is not in ordinate. Therefore, the cited Judgment is not helpful to the plaintiff.

07. Inconvenience if any caused to plaintiff for not filing the written statement within time can be taken care of by saddling some cost on the defendants. With these observations, I am inclined to allow the application. Resultantly, following order.

**ORDER**

1. Application is allowed.
2. No written statement order dated 29.04.2024 below Exh. 1 against defendant No. 10 to 12 is set aside on payment of cost of Rs. 1,500/- to plaintiff.
3. On compliance of order clause II, defendant No.10 to 12 are permitted to file written statement on record.

Place: Mahad  
Date : 18/06/2024

**(P. M. Unhale)**  
Civil Judge, S. D. Mahad