



Order Below Exh. 31 in R.C.S. No. 14/2019

(CNR No. MHRT 080001272019)

1. The present application is filed by defendant no.1 to set aside no W.S. order passed against him and submitted as under:-

Due to non availability of necessary documents within time defendant no.1 could not file his written statement in the court within stipulated time. Therefore, no W.S order against him. The defendant no.1 is prayed to allow the present application and seeking permission to file written statement on record.

2. On the other hand, the plaintiff has filed his say at exh. 34 and resisted the application. He submitted that reasons mentioned in application are false. Delay caused by defendant no. 1 is deliberately. Therefore, it is prayed to reject the application. Alternatively, he prayed that if this court came to the conclusion to allow this application then it may be allow with heavy cost.

3. Heard both sides at length.

4. Perused the record. It seems defendant no.1 has filed application for setting aside no W.S order. It is true that there is a delay to file W.S. on record. As per the provision of O.VIII Rule 1 of C.P.C. the word " Shall " is used. However, C.P.C deals with procedure and it is settled position that procedure is handmade of justice and every purpose of procedure is to facilitate the justice. Therefore, considering the principle, " no man shall condemn unheard " it is necessary that opportunity needs to be given to defendant to defend the case in the interest of justice.

5. However, so as to decide the suit on merit, if the order of no W.S is set aside that will not be cause prejudice to the plaintiff. So far as delay is concerned and financial loss cause to the plaintiff in attending the court is concerned, that can be compensated by saddling some cost to the defendant no.1. Accordingly, following order is passed.

: ORDER :

1. The application is allowed.
2. No W.S. order passed against defendant no. 1 is set aside subject to costs of Rs. 100/- be paid to the plaintiff.
3. Compliance be made within stipulated time.
4. Advocate and parties to note.

Date : 25.02.2021

(P.V.Patil)
Jt. Civil Judge, Deorukh

- : C E R T I F I C A T E : -		
Judgment/order in (Order below Exh.31 in R.C.S No.14/2019)		
I affirm that the contents of this Pdf file order are same words as per original order.		
Name of Stenographer	:-	A.A.Shivalkar
Court Name	:-	The Court of Civil Judge (J.D.) & Judicial Magistrate F.C., Deorukh
Date of decision	:-	25/2/2021
Order signed by PO. on	:-	25/2/2021
Order digitally signed by PO. on	:-	26/2/2021
Order uploaded on	:-	26/2/2021