

Regular Civil Suit No. 109/2018**Order Below Exh.48**

Read the application and say. This application is filed by defendants No. 1A and 1B for setting aside 'No W.S' order passed against them and seeking permission to file their written statement on the record.

02. It is contended by defendants No. 1A and 1B that, Defendant no.1A, being the aged woman, she is suffering from illness. So also, defendant no. 1B have entire responsibility of her family. Due to some family problems they were in trouble. Therefore they could not meet their advocate and file their written statement in stipulated period. They further contended that, if No W.S. order set aside and permission given to file their written statement on record no harm will be caused to the plaintiff. Further it will be helpful to the Court for determine the dispute between parties on merit. Hence, they prayed to set aside No W.S. order passed against them and grant permission to file their written statement on record.

03. The plaintiff opposed the application by filing her say and contended that, the application is liable to be rejected. Alternatively it is stated that the application may be granted subject to costs of Rs. 1000/-.

04. Heard both parties. Defendant nos. 1 and 2 appeared through their advocate, but despite, sufficient opportunities given they failed to file their written statement within stipulated period of 90 days. Therefore, my predecessor has pleased to pass No W.S. order against them.

05. I have taken the support of the judgment passed by Hon'ble Apex Court in Salem Advocate bar association Vs. Union of India 2005 A.I.R. SC W 3827. wherein it is held that,

" The use of the word "shall" in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

06. Thus, though it is provided under O.8 R.1 of the C.P.C. that the written statement shall be submitted within 90 days from the date of service of suit summons, it is not the mandatory rule. Only on the ground that delay of some days caused to file written statement the parties should not be non-suited. Therefore, in order to decide the matter on merits it will just and proper to condone the delay caused to

filing the written statement. However the delay caused by the defendants shall not be kept aside. Hence while allowing the application it will be just and proper to impose appropriate cost. Therefore, I am of the view that, the application is liable to be allowed by imposing cost on the defendant nos. 1A and 1B. Resultantly, I pass the following order.

Order

1. The application is allowed subject to costs of Rs. 500/- (Rs. Five Hundred only).
2. Defendants no. 1A and 1B are hereby directed to pay the cost amount to the plaintiff on or before next date. After payment of cost their written statement will be read and recorded.
3. The application is disposed of accordingly.

Kudal.
Date :- 05.12.2019.

Sd/-
(Sadanand B. Patil)
Civil Judge (J.D.), Kudal.