

**CNR No. MHSI070000132024****Order passed below Exh. No. 35
(I.A. No.01/2024) in R.C.S. No.05/2024**

The present application is filed by the defendant no. 1 to set aside no written statement order passed against him dated 22/04/2024.

2. The defendant has contended that, they could not get necessary documents therefore, he could not meet his advocate and failed to file his written statement within stipulated period. The said delay was not caused intentionally, therefore, prayed to set aside no written statement order passed against him.

3. The plaintiff has resisted the application by filing say at Exh.36. It is contended that application is false and frivolous. The defendant no. 1 has caused delay intentionally. Therefore, prayed to reject the application.

4. Heard Both the sides. Both the parties have reiterated the contentions of application and say. Perused the record. The record shows that despite of sufficient time and opportunity the defendant no. 1 has failed to filed their written statement. Consequently, on 22/04/2024 no written statement order was passed against defendant no.1. The defendant has assigned reason for the delay that he could not collect necessary documents and failed to file his written statement within stipulated period. The said application is supported by the affidavit of the defendant No.1 Sanjay Bhagawan Wayangankar. The affidavit shows that defendant has assigned sufficient reason for the delay.

5. The present suit is filed for partition and possession of separate share. The valuable rights of the parties are involved in the present case. The present suit is pertaining to the immovable property. Therefore, in order to arrive at just decision of the case, it would be just and proper to grant an opportunity to the defendant no. 1 put up his case. At the same time, it is necessary to impose cost upon defendant no. 1 for causing delay to file his written statement. Therefore, it would be just and proper by imposing Costs upon the defendant no. 1 to set aside no written statement order passed against him and allow him to file written statement. Hence, I pass following order.

ORDER

1. The application at **Exh.35** is hereby allowed and order dated 22/04/2024 is hereby set aside on payment of Costs of Rs.200/-.
2. The Costs amount be paid by the defendant no. 1 to the plaintiff.

(Pronounced and dictated in open Court.)

Place - Malvan
Date - 08/11/2024

Mahesh R. Devkate
Civil Judge Jr.Dn., Malvan.