

**CNR No. MHSI070000152011****Order passed below Exh. No.138
(I.A. No.3/2023) in R.C.S. No.4/2011**

The present application is filed by the defendant no.10 to set aside no additional written statement order dated 16/06/2017.

2. The defendant no.10 has contended that, defendant no.10 due to his personal and professional difficulties, he could not contact his advocate and failed to file his additional written statement within time. Therefore, no additional written statement order was passed against the defendant no.10. The said delay was not caused intentionally. If the no additional written statement order is not set aside, it will cause irreparable loss to the defendant no.10. Therefore, prayed to set aside no additional written statement order passed against him.

3. The plaintiffs have resisted the application by filing say on overleaf of the application. It is contended that present application is false and frivolous. The defendant no.10 has not filed additional written statement to prolong the matter. 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 defendant no.10 failed to file his additional written statement. Therefore, on 16/06/2017, my learned predecessor has passed no additional written statement order against the defendant no.10. The defendant no.10 has assigned reasons for

delay that due to his personal and professional difficulties, he could not file his additional written statement within time. The said application is supported by the affidavit of the defendant no.10. The affidavit shows that defendant no.10 has assigned sufficient reason for his absence.

5. The present suit is filed for the declaration, restoration of possession and perpetual injunction. The valuable rights of the parties are involved in the present case. 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.10 to put up his case. At the same time, it is necessary to impose heavy Costs upon defendant no.10 for delay to file his additional written statement. Therefore, it would be just and proper by imposing Costs upon the defendant no.10 to set aside his additional written statement order passed against him and allow him to file additional written statement. Hence, I pass following order.

ORDER

1. The application at Exh.138 is hereby allowed and order dated 16/06/2017 is hereby set aside on payment of Costs of Rs.1,000/- (Rupees One Thousand Only).
2. The Costs amount be paid by the defendant no.10 to the plaintiffs.

(Pronounced and dictated in open Court.)

Place - Malvan
Date - 13/04/2023

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