

ORDER BELOW EXH. 111 IN RCS NO. 33/2021
(Srikant Patil & Ors. Vs. Subhash Kanase & Ors.)

1. Perused application and Say filed on overleaf of the application. Defendant Nos. 1 and 2 have requested to set aside “No Additional Written Statement” order and allow them to file Additional Written Statement on record. It is submitted that, defendant No. 1 was ill and therefore defendant No. 2 was in the hospital to look after him, therefore he could not collect the documents within time. Hence, these defendants could not file Written Statement in time. The conduct of defendants is not deliberate. Lastly they prayed to allow the application. Plaintiffs have strongly resisted the application submitting that, reasons put forth by defendants is false and vexatious and present application has been filed only to prolong the matter. Hence, prayed to reject the application.

2. Initially plaintiffs have carried out amendment in the plaint by virtue of order passed below Exh. 105. Thereafter, the suit was kept for filing of additional Written Statement. Perusal of record and proceeding would reveal that since last one year these defendants did not filed their Written Statement. On 07/11/2023 this application has been moved. In view of facts and circumstances of the suit and the relief claimed therein, if opportunity to file the additional Written Statement is denied to these defendants, it will cause prejudice to both sides, as it will become an instrumentation for multiplicity of litigation, so also it will delay the proceeding to reach at finality before this Court.

Usually every endeavour should be made to dispose of the suit on merits rather than non-suiting a party on some technical ground. Considering the fact that substantial rights of the parties are involved, a last opportunity is required to be given to these defendants to contest the suit. However, considering the delay that has been caused on the part of defendants to move the application, plaintiff is required to be compensated to that extent. Hence, following order is passed.

ORDER

- (1) Application is allowed, subject to costs of Rs. 1,000/- (Rs. One thousand only) to be paid to plaintiffs on or before next date.
- (2) After payment of costs, the Additional Written Statement annexed along with this application be taken on record.
- (3) The non-compliance of the aforesaid order shall render it *non est*.

Islampur.
Date : 18/12/2023

(M.M. Chitale)
Joint Civil Judge Senior Division,
Islampur.