

ORDER BELOW EXH.23 IN SPL.C.S. NO.23/2023
(Smt. Mangal Patil Vs. Avinash Patil etc.)
CNR No. MHSN050014872023

1. Perused application and Say filed on overleaf of the application. Defendant No.1 has requested to set aside “No Written Statement” order and allow his to file Written Statement on record. It is submitted that, he could not get the relevant documents in time and hence delay is caused to file the Written Statement. The conduct of defendant No.1 is not deliberate. Lastly he prayed to allow the application.

2. Plaintiffs have strongly resisted the application submitting that, reasons put forth by defendant no.1 is false and vexatious and present application has been filed only to prolong the matter. Defendant No.1 has not filed any evidence for the delay. Hence, prayed to reject the application. In the alternative it is prayed that if the Court comes to conclusion to allow the application, then, costs of Rs.3000/- be imposed.

3. Perused record and proceeding. The suit summons are duly served on defendant No.1 on 03/06/2023. Defendant No.1 ought to have filed his Written Statement on or before 03/07/2023. Present application has been moved on 01/04/2024. That means there is a delay of 8 month. In view of facts and circumstances of the suit and the relief claimed therein, if opportunity to contest the suit is refused, 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. Considering the fact that substantial rights of the parties are involved, a last opportunity is required to be given to this defendant No.1 to contest the suit. No reason are assign with suggested this defendant No.1 was precluded from filing his defence by way of written statement. As mention above the reason suggested in application are neither good nor sufficient but to provide opportunity to contest suit and lead evidence pleading is required. Thus no W. S. order needs to be set aside. However, considering the delay and it's reason that has been caused on the part of defendant 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.500/- (Rs. five hundred only) to be paid to plaintiffs on or before next date.
- (2) After payment of costs, the 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 : 01/04/2024

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