



ORDER BELOW EXH. 15 IN R.C.S NO.69/2021

Manik & Others Vs. Raosaheb & Others.

CNRNOMHSN070004562021

This application is filed by defendant Nos. 1 to 5, 8, 15, 17, 18, 20 & 26 for setting aside No-written statement order passed against them by operation of law.

2. Present suit is filed for declaration and for mandatory, perpetual injunction. On 07/10/2021, applicants appeared in the suit through their learned Advocate, but failed to file their written statements within stipulated statutory period. The applicants submitted that they could not get relevant documents, and therefore, they could not file their written statement within stipulated period. Accordingly, prayed that in the interest of justice no written statement order be set-aside. The plaintiffs filed their say to this application and thereby opposed to this application. They submitted that applicants intentionally did not file their written statement within time. Sufficient reasons have not been given by applicant. For above reasons, they prayed for rejection of the application.

3. Perused the application and say. Heard argument of both parties. On perusal of summons service report reflects that summonses were served on applicants on 28/09/2021. They appeared on 07/10/2021, but did not file their written statement within stipulated time. This application is filed i.e. almost after a year and two months from the day of service of summonses. According to the applicants, they did not find relevant documents and therefore, they could not file their written statement.

4. Before dealing with the application it would be proper to refer

judgment of the Hon'ble Apex Court in the case of **Salem Advocate Bar Association, Tamil Nadu v/s Union of India reported in [AIR 2005 SC 3353]**. The Hon'ble Apex Court in this judgment in paras No. 21 & 22 has held that the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. But the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.

5. The period of more than a year and two months has elapsed since service of suit summonses. Applicants have given reason that documents are very old and therefore, they did not find it within time. The reason given by applicants appears to be plausible, but applicants did not explain such huge delay. But, I am of the view that right of the party to prosecute the litigation and that too, when property rights of the parties are involved in the matter, should not be taken away by technicalities. This application is filed along with written statement. It would be in the interest of justice of both parties if, suit is decided on merits by giving opportunity to applicants to file their written statement. Serious question of property right is involved in the suit. The presence of present applicants is necessary for determining real question in controversy between the parties. Therefore, considering nature of suit and in the interest of justice an opportunity shall be given to applicants for filing their written statement. But at the same time, certain costs shall be imposed on applicants for causing the delay. In the result, I pass the

following order.

:: O R D E R ::

1. Application at Exh.15 is allowed subject to costs of Rs.1,200/- (Rs. One Thousand and Two Hundred).
2. No written statement order against applicants is hereby set-aside, subject to costs of Rs. 1,200/- (Rs. One Thousand and Two Hundred). Costs amount be paid to plaintiffs.
3. Written statement of the applicants will be taken on record after payment of costs.

Date:-16.01.2023.

Kavathe-Mahankal,

(A.R.Vyawahare)
Civil Judge, Junior Division,
Kavathe-Mahankal.

Certificate

I affirm that the contents of this P.D.F. file order is same, word to word, as per the original order.

Name of the Stenographer	- H.P.Haridas
Court	- CJJD and JMFC, Kavathemahankal.
Date	- 16.01.2023
Presiding Officer on	-16.1.2023
Order uploaded on	-17.1.2023