

ORDER BELOW EXH. 33 IN R.C.S. No. 90/2020
(Passed on 13/12/2022)

This is an application filed by defendant No.2 for setting aside formal no written statement order. This application is filed beyond ninety days from the service of summons as written statement has not been filed by defendant no.2 within stipulated period. The application is supported by an affidavit.

2. It is contended that, defendant No.2 appeared on 10.09.2021 however, defendant couldn't file his written statement as he was not aware about the required documents and limitation for filing written statement. Therefore, he was not able to file his written statement within stipulated period. Further he submitted that he has not caused the delay deliberately. Further it is contended that, to decide the suit on merit it is necessary to grant fair opportunity to defendant No.2. Hence, prayed that the application be allowed and defendant No.2 be permitted to file his written statement.

3. The plaintiff has filed his say below Exh.35 and resisted the application. It is contended that the contents of application are false one. It is submitted that defendant No.2 has received suit summons on 20.02.2021 and he appeared on 10.03.2021. There is delay of one year and eight months to file written statement. Therefore, the application be rejected and if the court comes to conclusion to grant permission to defendant to file his written statement heavy cost may be imposed on defendants and it be paid to the plaintiff.

4. Perused the application and say. Heard both sides. It is pertinent to note here that the defendant No.2 is served with suit summons on 20-02-2021. The defendant No.2 appeared on 10.03.2021. Present application is filed on 16.11.2022 i.e. after lapse of almost one year five months from the expiry of limitation for filing written statement. However, defendant No.2 has made out sufficient cause which prevented

them from filing w.s. on time. His application is supported by affidavit. Therefore, he has made out sufficient and justifiable cause. Apart from it, to adjudicate matter on merit, it is just and necessary to grant fair opportunity to defendant No.2 to file his written statement. It will help the Court to decide the matter on merit. Therefore, I am inclined to grant permission to defendant No.2 to file his written statement on record. As far as delay caused during post pandemic period, it will be proper to impose cost. In turn, I pass following order.

ORDER

- 1) Application below Exh. 33 is allowed.
- 2) “No written statement” order passed against defendant No.2 is hereby set aside subject to cost of Rs.1000/- (Rs. One thousand) to be paid to the plaintiff.
- 3) Written statement of defendant No.2 shall be read and recorded after payment of cost.

Tasgaon
Date : 13/12/2022

(D. A. Darveshi)
2nd Joint Civil Judge J. D., Tasgaon.

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

Name of the Stenographer : N.P. Kulkarni (Grade-III)

Court Name : 2nd Jt. C.J.J.D. & J.M.F.C., Tasgaon.

Date of judgment/order :13.12.2022

Judgment/Order signed by the

Presiding Officer on :13.12.2022

Judgment/Order uploaded on :13.12.2022

ORDER BELOW EXH. 31 IN R.C.S. No. 90/2020
(Passed on 13/12/2022)

This is an application filed by defendant No.1 & 5 for setting aside formal no written statement order. This application is filed beyond ninety days from the service of summons as written statement have not been filed by defendants within stipulated period. The application is supported by an affidavit.

2. It is contended that, defendants appeared on 20.03.2021 however, due to spread of Covid-19 infection these defendants couldn't approach their advocate and prepared written statement within time. Therefore, they were not able to file their written statement within stipulated period. Further they submitted that they have not caused the delay deliberately. Further it is contended that, to decide the suit on merit it is necessary to grant fair opportunity to defendants. Hence, prayed that the application be allowed and defendants be permitted to file their written statement.

3. The plaintiff has filed his say below the application and resisted the application. It is contended that the contents of application are false one. It is submitted that defendants have received suit summons on 19.12.2020 and they appeared on 29.12.2022. There is delay of two years and six months to file written statement. Therefore, the application be rejected and if the court comes to conclusion to grant permission to defendant to file his written statement heavy cost may be imposed on defendants and it be paid to the plaintiff.

4. Perused the application and say. Heard both sides. It is pertinent to note here that these defendants are served with suit summons on 19-12-2020. These defendants appeared on 28.12.2020. Present application is filed on 18.07.2022 i.e. after lapse of almost one year four months from the expiry of limitation for filing written statement. However, defendants have made out sufficient cause which prevented

them from filing w.s. on time. Their application is supported by affidavit. Therefore, they have made out sufficient and justifiable cause. Apart from it, to adjudicate matter on merit, it is just and necessary to grant fair opportunity to defendants to file their written statement. It will help the Court to decide the matter on merit. Therefore, I am inclined to grant permission to defendants to file their written statement on record. As far as delay caused during post pandemic period, it will be proper to impose cost. In turn, I pass following order.

ORDER

- 1) Application below Exh. 31 is allowed.
- 2) "No written statement" order passed against defendants is hereby set aside subject to cost of Rs.1000/- (Rs. One thousand) to be paid to the plaintiff.
- 3) Written statement of defendants shall be read and recorded after payment of cost.

Tasgaon
Date : 13/12/2022

(D. A. Darveshi)
2nd Joint Civil Judge J. D., Tasgaon.

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

Name of the Stenographer : N.P. Kulkarni (Grade-III)

Court Name : 2nd Jt. C.J.J.D. & J.M.F.C., Tasgaon.

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