

ORDER BELOW EXHIBIT 16
IN MOTOR ACCIDENT CLAIM PETITION NO. 23/2019
(SHALANBAI VS. SACHIN & OTH.)
(PASSED ON : 19/01/2022)

Nature of the Application.

1. This is an application filed by the opponent No. 2 (for short 'opponent') to set-aside no say (for short 'no say') order passed against it.

Contents in the Application.

2. The opponent has contended that due to delay in collecting the relevant documents and Covid-19 situation, it was not possible for it to file say within time and no say order is passed against it. Therefore, in the interest of justice it is required to be set-aside. On these grounds the opponent has prayed to grant the application.

Contents in the Say of Applicant.

3. The applicant has filed say and strongly objected the application.

4. She has contended that the application is not legal and tenable. No sufficient reason is shown to grant the application.

5. On these grounds the applicant has prayed to reject the application.

The Argument.

6. I have heard advocate for the opponent and advocate for the applicant, at length.

7. They argued in consonance with their contention in the application and say. I will deal with those at the time of discussing the points taken for consideration.

Points and Findings.

8. Upon hearing, the following points arise for my

consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Can the no say order passed against opponent be set-aside, as prayed for ?	Yes.
2)	What order ?	Application granted. As per final order.

Reasons as to Point Nos. 1 and 2.

9. The opponent though appeared has failed to file say.
10. Hence, as per order dated 27/09/2021 application proceeded without say of the opponent.
11. The applicant has filed this petition in the year 2019.
12. The opponent has contended that due to delay in collecting the relevant documents and Covid-19 situation, it was not possible for it to file say and no say order is passed.
13. It is well settled principle in law that too technical or pedantic approach in cases of permitting any party to file written statement even at late stage is not called for. The Court have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having his determined on merits unless he has, by gross negligence, deliberate inaction, or something akin to misconduct, dis-entitled itself from seeking the indulgence of the Court.
14. It is now well established by the decisions of the Hon'ble Supreme Court as well as by the Hon'ble Bombay High court reported in Shaikh Salim Haji Abdul Khayumsab V/s. Kumar & others, 2005

A.I.R.SCW 6031 and Anil Kushabrao Phutane V/s. Madhukar Kushabrao Phutane and others, 2006(1) Mh. L.J. 369, that the court can permit filing of the say beyond 90 days if a case to that effect is made out.

15. In my view, considering the nature of the petition it is necessary in the interest of justice to set-aside no say order passed against the opponent.

16. Further, if the opponent is allowed to file say, the matter can be decided on merits and it will help to avoid multiplicity of proceeding. Therefore, also no say order passed against opponent is required to be set-aside.

17. According to the opponent, it is necessary to file say, in my view, considering the nature of the petition and the dispute involved an opportunity is required to be given to the opponent to file say, which will help to arrive at proper conclusion.

18. Above all, if the application is allowed no harm or injustice will be caused to the applicant but it will help to decide the petition on merit. Therefore, keeping in mind the legal principles supra, I am inclined to give an opportunity to the opponent to file say.

19. After giving thoughtful consideration to the facts of the case and the averments made by the opponent in this application I am of the considered view that for just decision of this petition it is necessary to give an opportunity to the opponent to file say in order to find out the truth in the allegations made by the applicant.

20. I am unable to persuade myself with the arguments advanced on behalf of the applicant that the application is not tenable, for the simple reason that a litigant ought not to be denied an opportunity of having his determined on merits and my findings, supra.

21. In short, relying on the principles discussed, supra and the

facts and circumstances of the case, I am inclined to grant this application, and allow the opponent to file say.

22. Accordingly, I answer Point No. 1 in the affirmative and Point No. 2 as application granted as per final order.

23. In the result the following order.

ORDER.

The application seeking setting aside the order of "no say" passed against the opponent is allowed.

(Pronounced in the Open Court).

Date : 19/01/2022

(M. B. Lambe),
Additional Sessions Judge,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

(a)Name of the Stenographer	:	Sou. M. M. Kulkarni
(b)Court	:	M. B. Lambe, District Judge – 1 & Addl. Sessions Judge, Pandharpur.
(c)Order signed by P.O. on	:	19/01/2022
(d)Order uploaded on	:	20/01/2022