

ORDER BELOW APPLICATION (EXHIBIT 19) IN
M.A.C.P. NO. 43/2021
(MALLIKARJUN VS. SHRIMANT & OTHS.)
(PASSED ON : 12/09/2022)

Nature of the Application.

1. This is an application filed by opponent No. 1 (for short 'opponent') to set aside no written statement (for short 'no. w.s.') order passed against him.

Contents in the Application.

2. The opponent has contended that it was not possible for him to file written statement within time and no w.s. order is passed against him. 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 the Petitioner.

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

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

5. On these grounds, the petitioner has prayed to reject the application with costs.

The Argument.

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

7. They argued in consonance with their contention in the application, say and keeping in mind the legal provisions in law. 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. w.s. 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 failed to file w.s. hence no w.s. order is passed against him.

10. The petitioner has filed this claim in the year 2021.

11. The opponent has contended that it was not possible for him to file w.s. and no w.s. order is passed.

12. 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 himself from seeking the indulgence of the Court.

13. 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

Ex Officio Member M.A.C.T., Pandharpur.

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 written statement beyond 90 days if a case to that effect is made out.

14. In my view, considering the nature of the claim it is necessary in the interest of justice to set aside no w.s. order passed against the opponent.

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

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

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

18. 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 claim it is necessary to give an opportunity to the opponent to file w.s. in order to find out the truth in the allegations made by the petitioner.

19. I am unable to persuade myself with the arguments advanced on behalf of the petitioner 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.

20. 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 w.s.

21. However, due to inability of the opponent to file the w.s. within time prescribed by law the applicant has unnecessarily suffered and for no fault of him it is him who shall suffer real prejudice therefore, I am of the view that the applicant need to be compensated reasonably by awarding suitable costs. The State i.e. the Taluka Legal Services Authority Pandharpur is also entitled to share the cost amount as directed from time to time by the Hon'ble Supreme Court and the Hon'ble High Court. The cost is quantified at Rs. 150/- (Rs. One Hundred Fifty only) considering the nature of application, delay caused and the overall conduct of the opponent.

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

23. In the result the following order.

ORDER.

1.	The application seeking setting aside the order of "no w.s." passed against the opponent No. 1 is allowed and the "no w.s." order is set aside subject to costs of Rs. 150/- (Rs. One Hundred Fifty only) to be deposited in the Court on or before 26/09/2022, failing which the application shall stand rejected, automatically.		
2.	The cost awarded shall be apportioned as herein below :-		
	a)	The applicant.	Rs. 100/- (Rs. One Hundred only).

	b)	The Taluka Legal Services Authority, Pandharpur.	Rs. 50/- (Rs. Fifty only).
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(Pronounced in the Open Court).

Dated : 12/09/2022.

(M. B. Lambe),
Ex Officio Member, M.A.C.T.
Pandharpur.

Ex Officio Member M.A.C.T., Pandharpur.

C E R T I F I C A T E

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

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,
District Judge – 1 &
Addl. Sessions Judge, Pandharpur.
- (c) Judgment signed by P.O. on : 12/09/2022
- (d) Judgment uploaded on : 13/09/2022