

**ORDER BELOW EXH. NO.32**  
**(Passed on 16<sup>th</sup> February, 2018)**

1. This is an application filed by defendant No.2 for setting aside the No W.S. order passed below Exhibit No.1 against him, as the defendant No.2 not filed his written statement within statutory period. Defendant No.2 has filed the application on the ground that defendant No.1 is suffering from mental disease. Defendant No.2 is required to take care of defendant No.1. Meanwhile mother of defendant No.1 was died due to the above situation. He failed to file his written statement within reasonable period. Now, defendant No.2 intending to contest the suit by filing his written statement. The defendant No.2 filed his written statement along with present application. Defendant No.2 prayed for setting aside the no written statement order passed below Exhibit No. 1.

2. This application is resisted by the plaintiff by filing his say on the overleaf of said application. Plaintiff contended that the reasons mentioned in the application are false and imaginary. The application is not bonafide. Plaintiff contended in alternate that if the court came to conclusion of allowing the application cost of Rs. 5,000/- be imposed on the defendant No.2.

3. Heard Shri. V. D. Bagal learned advocate for the defendant No.2 and Shri. T. B. Salunkhe learned advocate for the plaintiff. The points for determination along with my findings thereon are as follows.

<u>SR.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
[i]	Whether there is a sufficient cause for the defendant No.2 for not filing his written statement within prescribed period ?	Yes.
[ii]	What order?	Application is allowed.

### REASONS

#### AS TO POINT NO.1 :

4. The suit is for partition and separate possession. Therefore, liberal view have to be taken while considering this application. The reason assigned appears to be satisfactory as without instructions and relevant documents it was not possible to file written statement. Therefore, in my view, it will be in the interest of justice to grant an opportunity to the defendant No.2 to contest the suit by filing his written statement. At the same time, plaintiff has to be compensated for the delay caused. Hence, the point No. 1 is answered in the 'affirmative' and in response to point No. 2, I proceed to pass the

following order.

**ORDER**

1. The application Exhibit 32 is allowed subject payment of costs of Rs. 600/- (in words rupees six hundred only) to be paid by the defendant No.2 to the plaintiff or deposit into court on or before next date failing which the application shall automatically stands rejected without further reference.
2. Time for filling written statement by defendant No.2 is extended. The order of no written statement passed below Exhibit No. 1 dated 14-11-2014 is hereby setaside.
3. Written statement filed by the defendant be taken on record after payment of costs.

16<sup>th</sup> February, 2018.

Sd/-  
( D. U. Rajput )  
6<sup>th</sup> Jt. Civil Judge, Junior Division,  
Pandharpur.

CERTIFICATE

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 :Sadafule M. P. Steno(LG)

(b) Court :6<sup>th</sup> Jt. Civil Judge, Junior Division,  
Pandharpur.

(c) Order signed by P.O. on :16<sup>th</sup> February, 2018.

(d) Order uploaded on :16<sup>th</sup> February, 2018.