

**ORDER BELOW EXHIBIT NO.40**  
**(PASSED ON 27<sup>th</sup> NOVEMBER, 2018)**

1. This is an application filed by defendant no. 1 for recording his written statement on record. Defendant no. 1 contended that he had filed his written statement along with his application below exhibit no.30 dated 18-08-2017 for setting aside no written statement order passed below exhibit no. 1. Said application is allowed on 16-02-2018 subject to cost of Rs. 600/-. Present defendant failed to deposit the cost amount within stipulated time. Now, present defendant prayed for permission to deposit the cost amount and to record his written statement.

2. The application is resisted by the plaintiff by filing his say on the overleaf of said application. The plaintiff contended that present defendant failed to file his written statement within stipulated period fixed by the law and also failed to deposit the cost amount within fixed period by the said order. Present defendant filed this application after seven months from the date of order passed below exhibit no. 30. Plaintiff prayed for as the order passed below exhibit nos. 30 and 32 clearly manifest that if defendants are failed to deposit the cost amount the order shall automatically stands rejected without further reference. Therefore, plaintiff prayed for rejection of application filed by the present defendant.

3. Heard learned advocates for rival parties. 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 defendants for not depositing the cost amount within fixed period ?	Yes.
[ii]	What order?	Application is allowed.

**REASONS**

**AS TO POINT NO.1 :**

4. This is a suit for declaration, partition and possession of immovable property situated at village-Khedbhose, Taluka-Pandharpur. The order below exhibit nos. 30 and 32 were passed on 16-02-2018. Present defendants contended that due to some technical difficulty learned advocate for the defendants failed to communicate the said order to the present defendants. Which was resulted in failure by the defendants in depositing the cost amount. Now, present defendant is intended to deposit the cost amount and prayed for permission to deposit the said amount and recording his written statement. Record shows that, present application is filed after seven months from the date of order passed below exhibit no. 30. The reason assigned appears to be satisfactory as without instructions and communication with his learned advocate it was not possible to deposit cost amount. 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 no. 40 is allowed subject to payment of cost of Rs. 500/- (in words rupees five hundred only) in addition to earlier cost amount of Rs. 600/- as per order passed below exhibit no. 30 to be paid by 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 in view of section 148 of Code of Civil Procedure. The order of auto rejection on failure by defendant no. 2 passed below exhibit no. 30 dated 06-02-2018 is hereby set aside.
3. Written statement filed by the defendant no. 2 be taken on record after payment of costs.

27<sup>th</sup> November, 2018.

sd/-  
( D. U. Rajput )  
4<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. C.J.J.D., Pandharpur.
- (c) Order signed by P.O. on : 27<sup>th</sup> November, 2018.
- (d) Order uploaded on : 4<sup>th</sup> December, 2018.