

ORDER BELOW EXH. 38 IN SPL. CIVIL SUIT NO. 25/2024

(Suhas Badewar Vs.Narendra Kamboj and Ors.)

[CNR No.MHSO120001442024]

Defendants no. 2 and 5 have filed present application for setting aside ex-parte order passed against them and for permission to file written statement on record. It is their contention that, they have served with suit summons on 31.01.2025 and appeared through advocate on oral instructions given by them. As the defendant no. 2 is old aged lady and she has eye problem since November 2024 and defendant no. 5 was taking care of her, they could not file Vakalatnama and written statement on record. Therefore on 30.04.2025 ex-parte order has been passed against them. They are not residing within the jurisdiction of this court and they are residence of Nashik. Defendant no. 2, due to her old age, is unable to travel. Therefore, it is necessary to set aside ex-parte order passed against them and grant permission to file written statement on record in the interest of justice. Hence, the application.

2) Learned advocate for the plaintiff has filed say on the application itself and objected the application on the ground that, the reasons mentioned in the application are not legal. The application is filed deliberately to delay the matter. Therefore, it be rejected.

3) Perused the application and say thereon. Heard both sides. According defendant no. 2 and 5 they have served with suit summons on 30.01.2025. As per Order VIII, Rule 1 of Code of Civil Procedure, 1908, defendant has to file his written statement within a period of 30 days. Accordingly, these defendants have to file written statement on or before 01.03.2025. The present application along

with written statement has been filed on 13.06.2025. It is seen that, delay of more than 03 months has been caused to these defendants. The proviso provided to Order VIII, Rule 1 of Code of Civil Procedure, 1908 says that, if the defendant failed to file written statement within a period of 30 days, he shall be allowed to file the same within the period of 90 days. The period of 90 days was expired on 29.04.2025. It is seen that, the written statement is not filed within period of 90 days also and from the date of completion of 90 days, the delay of near about 02 months has been caused to the defendants. The plaintiff has filed present suit for declaration and for other reliefs. Defendants have shown sufficient reason. Considering the nature of suit and reliefs claimed, written statement of this defendants is necessary to be on record for full and final adjudication of the matter. No prejudice will cause to the plaintiff, if application is allowed. On the other hand, if it is rejected these defendants will suffer irreparable loss. The plaintiff can compensated for delay caused by defendants. Hence, the following order.

ORDER

1. Application below Exh.38 filed by defendants no. 2 and 5 is allowed subject to cost of Rs.300/- (Rs. Three hundred only) to be paid to the plaintiff on or before next date.
2. Ex-parte order passed against defendants nos. 2 and 5 dated 30.04.2025 is hereby set aside.
3. Defendants no. 2 and 5 are permitted to file their written statement on record.

Date : 25/09/2025

(**Revati M. Kante**)
Jt. Civil Judge, Sr. Div., Barshi.

CERTIFICATE

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

- a) Name of the Stenographer : G.L. Sutar, Steno. Grade-2
- b) Court : Jt. C.J.S.D. and A.C.J.M.,
Barshi.
- c) Date of Judgment/Order : 25.09.2025
- d) Judgment/Order signed by
the Presiding Officer on : 25.09.2025
- e) Judgment/Order uploaded on : 25.09.2025