

MHSO130003982015**ORDER BELOW EXHIBIT-51**

Defendant no.3 prayed for giving her the permission to file written statement by setting aside No W.S. order passed against her. She submitted that she being lady, after marriage started to reside at Tuljapur. She was busy in the education, marriage and pregnancy of her daughter. Due to all these reasons, she failed to file written statement. She has good case. If opportunity to defend the suit would not be granted then she would be ousted from the defence. There are reasonable grounds to allow this application. Hence prayed accordingly.

02. The plaintiffs have strongly opposed the application. They submitted that the present application is not within limitation. The defendant no.3 moved this application only to prolong the trial. Now the case is for evidence. So prayed for rejection of the application.

03. Heard both parties at length. The record shows that defendant no.3 appeared through her learned counsel on 02/04/2015. She failed to file written statement within statutory period. So necessary order is passed against her on Exh.1 and thereby proceeded the suit without her written statement on 21/03/2016. Since this date, she never turned up to file written statement on record. This application moved on 15/10/2022.

This application moved after almost 5 ½ years. The defendant no.3 submitted the reason that she was busy in the education, marriage and pregnancy of her daughter. But no document on record in support of the reasons.

04. The present suit is for partition of the suit properties. The plaintiff claiming 1/3rd share in the suit properties. Defendant no.3 is the aunt of plaintiff no.1 and 2 and sister-in-law of plaintiff no.3. There is near and dear relationship between the plaintiffs and defendant no.3. Defendant no.3 also claimed 1/3rd share in the suit properties by filing the written statement along with this application. When the present suit is for partition of the suit properties then presence of every parties is necessary to decide their share, if any, in the suit properties. If defendant no.3 also claiming her 1/3rd share in the suit properties then her presence and her written statement required to be brought on record. If this permission would not be given then she will loose the right to defend the suit. No doubt there is delay on the part of defendant no.3 for filing written statement. In this case the issues are settled. The plaintiffs have not closed their evidence. The case is for evidence of the plaintiffs. This means the suit is not at the fag end. Considering this situation, present application is deserves to be allowed subject to imposing costs upon defendant no.3. This application filed after 5 ½ years. So it is necessary to impose heavy costs upon defendant no.3. Hence I proceed to pass following order;

ORDER

- 1) Application Exh.51 is allowed subject to payment of costs of Rs.5,000/-(Rs. Five Thousand only) to be paid to the plaintiffs on or before next date.
- 2) The defendant no.3 also pay the costs of Rs.1,000/- (Rs. One Thousand only) to the Taluka Legal Services Authority, Barshi on or before next date.
- 3) Both costs are condition precedent for this application. Failure to which, this order will be vacated.

Barshi.
Date : 19/08/2023.

(S.B. Vijaykar)
Jt. Civil Judge (J.D.),Barshi.

C E R T I F I C A T E

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

(a)	Name of the Stenographer	:	S.R. Barangule
(b)	Court	:	S.B.Vijaykar, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order signed by P.O. on	:	19/08/2023
(d)	Judgment /Order uploaded on	:	19/08/2023