

**ORDER BELOW EXH. 18 IN R.C.S. No. 30/2023**

1. This is an application filed by defendants to condonation of delay to file written statement and say as well as setting aside no written statement and say order passed against them on 12.07.2023. Plaintiff filed his say on the overleaf itself and opposed the application on the ground that no justifiable cause has been made out.
2. Perused application and say of plaintiff. Heard learned advocate for both the parties.
3. By this application defendants have requested to condone the delay to file written statement as well as setting aside no written statement and say order to the suit. According to the defendants, due to their illness, they could not file written statement and say in time. The defendants have filed this application along with written statement, say and requested as aforesaid.
4. The plaintiff filed his say and submitted that the reason mentioned in the application is not legal, proper and correct. Therefore, plaintiff prayed to reject application.
5. On perusal of record, it reveals that, the suit is for perpetual injunction. The defendants have not filed written statement and say within stipulated period on record. However, it is well settled principle of law that litigation has to be decided on the merits and not technicalities. Opportunity to file written statement and say needs to be given to parties to put forth their contentions/defence being principle of natural justice. The substantial rights of the parties in immovable property are involved

in the matter. Therefore, the effective adjudication of suit on merits requires contest and participation of rivals. Further, if the application is rejected and permission to file written statement and say is not granted, defendants will suffer hardship. They will not get the opportunity to defend himself. On the other hand, if the application is allowed, no loss will cause to the plaintiff. Therefore, to decide controversy between parties completely and to avoid multiplicity of proceedings, defendants need to be given opportunity to file their written statement and say.

6. In view of aforesaid discussions to my opinion the defendants need to be given an opportunity to put forth their defence and the application deserves to be allowed. At the same time the delay and inconvenience caused to the other side is required to be considered and compensated by awarding the cost. Thus, keeping in mind the object of awarding the cost viz. “compensate and not to punish” the application deserves to be allowed subject to cost of Rs.1000/-. Accordingly, I pass following order;

#### **ORDER**

1. Application is allowed subject to cost of Rs.1000/-.
2. Defendant no.1 and 2 do pay the cost to the plaintiff or deposit in the court within a month, failing which suit shall proceed further.
3. On payment of costs written statement and say of defendants be read and record.

**Date : 18-10-2024**

**(Vrushali K Patil)**  
Jt. Civil Judge (J.D.), Mangalwedha.

**CERTIFICATE**

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

- (a) Name of the Stenographer : S.M. Gaddam
- (b) Court : Jt. Civil Judge Jr. Div.,  
Mangalwedha.
- (c) Order signed by P.O. on : 19-10-2024
- (d) Order uploaded on : 19-10-2024