

ORDER BELOW EXH. 23 IN R.C.S. No. 77/2023
(MHSO180005222023)

This is an application filed by defendant no. 1 to 3 for condonation of delay to file written statement.

2. Perused application and say of plaintiffs. Heard learned advocate for both the parties.

3. By this application defendant no. 1 to 3 have requested to condone the delay to file written statement and say to the suit. According to defendant no. 1 to 3, due to non-availability of documents and information they have not filed say and written statement within limitation hence, no say and no written statement order has been passed against them. The delay of more than 94 days caused to file say and written statement on record. Therefore, they prayed to allow the application.

4. The plaintiffs filed their say and submitted that, the reason mentioned in the application is false. The defendants intentionally causing the delay. Hence, they prayed to reject the application and if, application is allowed cost of Rs.3,000/- be imposed.

5. On perusal of record, it reveals that, the suit is filed for partition and separate possession. Defendant no. 1 to 3 have not filed say and written statement 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 say and written statement needs to be given to parties to put forth their contentions/defence being principle of natural justice. The substantial rights of the parties 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 say and written statement is not granted, defendant no. 1 to 3 will suffer hardship. They will not get the opportunity to defend themselves. On the other hand, if the application is allowed, no loss will cause to the plaintiffs. Therefore, to decide controversy between parties completely and to avoid multiplicity of proceedings, defendant no. 1 to 3 need to be given opportunity to file their say and written statement.

6. In view of aforesaid discussions to my opinion defendant no.1 to 3 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.500/-. Accordingly, I pass following order;

ORDER

Application is allowed subject to cost of Rs. 500/- to be paid by defendant no. 1 to 3 to plaintiffs on or before next date.

Date : 03.10.2025

(V.K. Patil)
Civil Judge J.D., Mangalwedha.

ORDER BELOW EXH. 25 IN R.C.S. No. 77/2023
(MHSO180005222023)

This is an application filed by defendant no. 1 to 3 praying for setting aside no say and no written statement order passed against them.

2. Perused application and say of plaintiffs. Heard learned advocate for both the parties.

3. According to defendant no. 1 to 3, due to non-availability of documents and information, they have not filed written statement and say within limitation hence no say and no written statement order passed against them. They have not intentionally avoiding to file written statement. Now, they filed present application alongwith say and written statement and prayed to allow the application.

4. The plaintiffs filed their say and submitted that, the reason mentioned in the application is false. Hence, they prayed to reject the application and alternatively prayed for cost of Rs.3000/-.

5. On perusal of record, it reveals that, the suit is filed for partition and separate possession. Defendant no. 1 to 3 have not filed say and written statement within stipulated period on record. Hence, by the present application defendants wanted to file their say and written statement on record by setting aside no written statement order. 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 needs to be given to parties to put forth their contentions/defence being principle of natural justice. The substantial rights of the parties 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 say and written statement is not granted, defendants will suffer hardship. They will not get the opportunity to defend themselves. On the other hand, if the application is allowed, no loss will cause to the plaintiffs. Therefore, to decide controversy between parties completely and to avoid multiplicity of proceedings, defendant no. 1 to 3 need to be given opportunity to file their say and written statement.

6. In view of aforesaid discussions to my opinion defendant no. 1 to 3 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. 500/-. Accordingly, I pass following order;

ORDER

1. Application is allowed subject to cost of Rs. 500/- to be paid by defendant no. 1 to 3 to plaintiffs on or before next date.
2. On payment of costs, say and written statement of defendant no. 1 to 3 be read and record.

Date : 03.10.2025

(V.K. Patil)
Civil Judge Jr.Div., 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 : Civil Judge Jr. Div.,
Mangalwedha.
- (c) Date of order : 03.10.2025
- (d) Order uploaded on : 03.10.2025