

ORDER BELOW EXH. 21 IN R.C.S. No. 131/2023

This is an application filed by defendant no.1 and 2 to condonation of delay to file written statement and say to the suit. Plaintiffs filed their 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 plaintiffs. Heard learned advocate for both the parties.

3. By this application defendant no.1 and 2 have requested to condone the delay to file written statement and say to the suit. According to defendant no.1 and 2, due to getting the education they are residing at another village hence delay has been caused to file written statement. Therefore, they prayed to allow the application.

4. The plaintiffs filed their say and submitted that, on 21.07.2023 the summons served on defendant no.1 and 2. They intentially not mentioned the delay in the application. 1 year, 9 months delay caused to them. The reason of delay mentioned in the application is not proper and legal and not filed documentary evidence in respect of delay. Hence, they prayed to reject the application and alternatively if application is allowed, cost of Rs.15,000/- be imposed.

5. On perusal of record, it reveals that, the suit is filed for declaration and encroachment. Defendant no.1 and 2 have not filed 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 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 written statement is not granted, defendant no.1 and 2 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 plaintiff. Therefore, to decide controversy between parties completely and to avoid multiplicity of proceedings, defendant no.1 and 2 need to be given opportunity to file their written statement.

6. In view of aforesaid discussions to my opinion defendant no.1 and 2 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

Application is allowed subject to cost of Rs.1000/- to be paid by defendant no.1 and 2 to plaintiff on or before next date.

Date : 03.05.2025

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

ORDER BELOW EXH. 23 IN R.C.S. No. 131/2023

This is an application filed by defendant no. 1 and 2 praying for setting aside no written statement and say order passed against them. Plaintiffs filed their 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 plaintiffs. Heard learned advocate for both the parties.

3. As per the contention of defendant no.1 and 2, due to getting the education they are residing at another village so, they failed to file written statement and say within time. Therefore, no written statement order passed against them on 18.09.2024. Defendants filed present application alongwith 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. The defendants filed applications for adjournment at Exh. 11, 14 and 15. Sufficient opportunity is given to defendants to file written statement. Hence, they prayed to reject the application and alternatively if application is allowed, cost of Rs.15,000/- be imposed.

5. On perusal of record, it reveals that, the suit is for declaration and encroachment. Defendant no.1 and 2 have not filed written statement within stipulated period on record. Hence, by the present application defendants wanted to file their written statement and say on record by setting aside no written statement order. But, plaintiff strongly objected to allow the present application. 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 written statement and say 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 plaintiff. Therefore, to decide controversy between parties completely and to avoid multiplicity of proceedings, defendant no.1 and 2 need to be given opportunity to file their written statement.

6. In view of aforesaid discussions to my opinion defendant no.1 and 2 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/- to be paid by defendant no.1 and 2 to plaintiffs on or before next date.
2. On payment of costs written statement and say of defendant no.1 and 2 be read and record.

Date : 03-05-2025

(Vrushali K.Patil)
Jt. 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 : Jt. Civil Judge Jr. Div.,
Mangalwedha.
- (c) Date of order : 03-05-2025
- (d) Order uploaded on : 03-05-2025