

ORDER BELOW EXH. 26 IN R.C.S. No. 317/2023

1. This is an application filed by defendant no. 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. 2 has requested to condone the delay to file written statement and say to the suit. According to the defendant no. 2, due to his illness and non-availability of documents he could not file written statement and say in time. Defendant no. 2 has filed this application along with written statement, say and requested as aforesaid.

4. The plaintiffs filed their say and submitted that, the reason mentioned in the application is not proper and legal. Only prolonging the matter, he intentionally failed to file written statement within stipulated period. Hence, at last he prayed to reject the application and alternatively if application allowed, he prayed to imposed heavy cost.

5. On perusal of record, it reveals that, the suit is for partition and separate possession and perpetual injunction. Defendant no. 2 has 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, defendant no. 2 will suffer hardship. He will not get the opportunity to defend himself. 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. 2 needs to be given opportunity to file his written statement and say.

6. In view of aforesaid discussions to my opinion the defendant no.2 needs to be given an opportunity to put forth his 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/-.
2. Defendant no. 2 do pay the cost to the plaintiffs or deposit in the court within a month, failing which suit shall proceed further.

Date : 11-11-2024

(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 : 11-11-2024
- (d) Order uploaded on : 11-11-2024