

**ORDER BELOW EXH. 28 IN R.C.S. No. 317/2023**

1. This is an application filed by defendant no. 2 praying for setting aside no written statement and say order passed against him on 03.05.2024. 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 set aside no written statement and say order. According to defendant no.2, due to 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, only prolonging the matter, he intentionally failed to file written statement within stipulated period therefore, no written statement order passed on 03.05.2024 against him. 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. Hence, no written statement and say order passed against defendant no. 2 on 03.05.2024. Hence, by the present application defendant no. 2 wanted file his written statement and say on record by

setting aside no written statement and say order. But, plaintiffs 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 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 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.

3. On payment of costs written statement and say of defendant no.2 be read and record.

Date : 11-11-2024

(V.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