

ORDER BELOW EXH.-13 IN R.C.S. No. 166/2020

(Dated-03.10.2022)

This is an application filed by the defendant for setting aside no written statement order passed below Exh. 1 dated 21.01.2022 and condonation of delay to file written statement.

2. The defendant in her application contended that she received suit summons on 01.03.2021. However, due to the Covid-19 pandemic, she could not file her written statement within the stipulated time. Due to the filing of the suit, the defendant got shocked and suffered from mental illness. Accordingly, she is also taking medical assistance from various hospitals. Valuable rights of the defendant are involved in the suit. Therefore prayed for setting aside ex-parte order and condonation of delay.

3. The plaintiff filed his say on the overleaf of the application and contended that the reasons mentioned by the defendant are not proper. The defendant did not mention the delay in her application. Hence prayed for rejection of the application with costs.

4. In support of the application the defendant also filed medical reports of the defendant and a receipt relating to medicine. Heard learned advocate for the plaintiff and the defendant. Learned advocate for the defendant submitted that the defendant did not cause delay intentionally. She was taking treatment in the hospital for her mental illness. On the other hand, the learned advocate for the defendant submitted that the documents relating to medical reports are from last year. The medical receipt produced by the

defendant appears to be re-write by the defendant. The reports produced by the defendant are stating the health condition of the defendant as normal. Therefore, prayed for costs of Rs. 50,000/-.

5. In order to set aside the ex-parte order and condonation of delay the defendant must show good cause for her previous non-appearance. Perused roznama and documents on record. It appears that the defendant is served with the suit summons on 26.02.2021. In spite of service of suit summons the defendant failed to appear before the court, hence ex-parte order has been passed against the defendant on 21.01.2022.

6. In order to show good cause the defendant has produced medical reports of the hospital and a medical receipt dated 01.06.2022 of the hospital. The two reports submitted by the defendant are of 19.02.2021. Considering the description of the medicines mentioned in the medical receipt, it appears that the description is related to depression, etc. Therefore though the medical reports are normal, it does not mean that the defendant did not suffer from mental illness. However, the defendant failed to file a recent medical receipt or report. Therefore delay from 01.06.2022 to 19.09.2022 has not been explained by the defendant.

7. So far as the contention of the plaintiff is concerned, the suit is for a partition. A trial is not yet commenced, therefore, to give fair opportunities, it is just and fair to set aside the ex-parte order and condone the delay. No prejudice will be caused to the other party except by efflux of time which can be compensated by terms of costs. Hence, the application of the defendant for setting

aside the ex-parte order and condonation of delay deserves to be allowed.

8. Considering the delay as well as the stage of the suit it would be proper to impose a cost of Rs. 500 on the defendant. In view of this, I pass the following order.

ORDER

1. The application is allowed subject to a cost of Rs. 500/- to be paid by the defendant to the plaintiff till the next date.
2. The delay caused for the filing of the written statement is condoned, after the payment of the above-mentioned costs to the plaintiff by the defendant.
3. The ex-parte order passed against the defendant dated 21.01.2022 is set aside, after the payment of the above-mentioned costs to the plaintiff by the defendant.

Mohol

Date: 03.10.2022

(R.R. Jadhav)

2nd Jt. Civil Judge Junior Division,
Mohol.