

ORDER BELOW EXH. 48 IN REG. CIVIL SUIT NO. 30/2014.

Through this application defendant No. 1 and 2 have prayed for setting aside 'No-W.S.' order passed against them on 17.06.2014. The say of the plaintiff is called for which is at Exh. 53. The plaintiff has resisted the application on the ground that the application does not contain the reasons due to which these defendants failed to file their written statement within stipulated period. Thus the plaintiff has prayed for the rejection of the application.

02. Perusal of the proceeding defendant No. 2 appeared before the court in response to the suit summons on 17.02.2014 whereas defendant No. 1 secured his presence in view of the service of summons on 27.03.2014. The record also shows that both these defendants applied for extension of time in order to enable themselves to file the written statement for number of occasions. Lastly my learned predecessor having regard to the fact that these defendants failed to file their written statements within the period of 90 days, therefore, passed the order of 'No-W.S.' against these defendants on 17.06.2014.

03. At Exh. 40 on 18.11.2014 defendant No. 1 and 2 applied to permit them to place on record their written statement. My learned predecessor passed the order stating that application is not maintainable since 'No-WS' order as already been passed against them. Thereafter, the present application came to be filed with the prayer that the 'No-W.S.' order passed against these defendants may kindly be set aside. It is also contended

by these defendants that when they filed the application Exh. 40 they inadvertently forgotten to mention that their written statement be placed on record by setting aside 'No-WS' order.

04. As per Order 8 Rule 1 of the Civil Procedure Code defendant is suppose to file written statement within 90 days from the date of service of summons. This period of 90 days is extended period and the actual period within which defendant is required to file written statement is 30 days. The proceeding reflects that application Exh. 40 came to be filed on 18.09.2014 and the 'No-W.S.' order against these defendants came to be passed on 17.06.2014. The application Exh. 40 if at all considered to be one for setting aside 'No-W.S.' order, then also it transpires that the said application Exh. 40 also came to be filed with huge delay of three months. If such delay is to be counted in relevance to the present application technically such delay extends to five months.

05. These defendants have already exhausted the period of 90 days for enabling themselves to file their written statement but they failed to file the same. Further they have made delay of five months in applying setting aside 'No-W.S.' order passed against them. One is suppose to file written statement within 30 days from the date of service of summons and the said period of 30 days can be extended upto 90 days if court finds it proper.

06. In the context of the case and in order to make the present application worth to be entertained what was and is expected from these defendants is to offer and explanation for their failure to file their written

statement within expected stipulated period. The application shows that the reasons behind failure to file their written statement and for delay in filling the present application with such inordinate delay has not been mentioned. Even the application Exh. 40 if it is assumed to be the application for setting aside 'No-W.S.' order shows no explanation whatsoever due to which these defendants were prevented from filling their written statement.

07. The present application seems to have been filed very casually. No doubt the procedural laws are the assisting hands of the substantive laws and they are required to be interpreted liberally. But it does not mean that the party should misuse and abuse the provisions by not interpreting it its true spirit. The procedural laws are made for arriving at justice and to have procedural discipline. The statutes are required to be interpreted in the light of object and intention of the legislature.

08. Defendant No. 1 and 2 have not put forwarded the reasons due to which they failed to file their written statement in time. The application itself warrants that the reasons for failure to file written statement are to be mentioned. In such circumstances when the delay has not been explained and when the court has not been addressed about the factors which prevented these defendants from filling their written statements, the application itself cannot be entertained.

09. In these matrix of the facts one can have refers to the case of (*Prabhakar Madhavrao Mule Vs. Bhagwan Mitharam Chaudhari 2004(2) Mh.L.J. 1058*) Wherein the Hon'ble High Court Bombay has held that Rule 1 Order 8 of Code of Civil Procedure is mandatory in nature and it

requires strict compliance. It is true that use of word “shall” itself not conclusive of the question whether the provision is mandatory or directory. In order to find out the real and true character of legislation, the court is required to find out the object of amendment and the context in which the amendments are brought. If the object of law is to be defeated by non compliance, it has to be regarded as mandatory. The Hon'ble High Court further observed that the requirement of filling written statement within 30 days is certainly mandatory.

10. From all above discussion and having regard to the ratio laid down in the case cited supra, it is clear that the application filed by defendant No. 1 and 2 for setting aside order of 'No-W.S.' passed against them by this court requires to be rejected. In these circumstances I pass the following order.

ORDER

The application is rejected.

Karad
Date: 29/08/2015

(Dr. G.A. Deshpande)
Jt. Civil Judge J.D., Karad