

**ORDER BELOW EXH. 22 IN R.C.S. NO. 211/2021.**

This is an application moved by defendant no. 1 for setting aside no written statement order passed against him. The application is supported by affidavit. Say of plaintiff was called thereon.

2. It is contended that, due to unavailability of documents and illness, he has precluded from filing his written statement within limitation. If the application is not allowed then, it will cause prejudice to him. Whereas, no such prejudice would be caused to the plaintiff. Hence, they prayed to allow the application. On the other hand, the plaintiff has objected the application and stated that, no justifiable reasons put forth in the application. Hence, he prayed to reject the application with heavy costs.

3. Perused the application, say and record. Heard both sides. Record shows that, the defendant has not filed W.S. within statutory period. Therefore, no W.S. order was passed. The suit is at initial stage. This being a trial Court, opportunity needs to be given to the defendant for filing their W.S. so as to decide the suit on its merits. No prejudice would be caused to the plaintiff, if the permission is granted. On the other hand, if the permission is not granted, serious prejudice would be caused to the defendant. Therefore, the application is required to be allowed. But, at the same time, there is delay caused by defendant, which needs to be compensated in terms of necessary costs. Hence, following order.

**-: O R D E R :-**

1. No written statement order passed against defendant no. 1 is set aside subject to costs of Rs.

... 2 ...

200/- to be paid by the defendant no. 1 to the plaintiff on or before next date.

2. The payment of costs is *pre-condition* to take the written statement on record.

Place : Patan.  
Date :- 19/10/2022.

(P. S. Girgaonkar)  
Civil Judge (Jr. Div.), Patan