

**ORDER BELOW EXH.36 IN R.C.S.NO. 233/2022.**

Defendant Nos.1, 2, 3A, 3B and 3C have filed this application for setting aside no written statement and evidence close order passed against them. The application is supported by affidavit. Say of plaintiff was called thereon.

2. It is contended that, due to lack of knowledge of the law, due to defendant nos. 1 and 2 being old aged persons and for the reasons stated in the application, they have precluded from filing their written statement within limitation. If the application is not allowed then, it will cause prejudice to them. Whereas, the plaintiff has objected the application and stated that, no justifiable reasons put forth in the application. There is huge delay. The application is filed at belated stage. Hence, the plaintiff prayed to impose costs of Rs.3,000/-, if the application is allowed.

3. Perused the application, say and record. Heard both sides. Record shows that, the defendants have not filed W.S. within statutory period. Therefore, no W.S. order was passed against them. Thereafter, the plaintiff lead evidence on his behalf. Thereupon, no cross and consequently, evidence close order was passed against them. Though, the plaintiff has closed his evidence. But, this being a trial Court, opportunity needs to be given to the defendants for filing their W.S. and to adduce evidence, 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 defendants. Therefore, the application is required to be allowed. But, at the same time, there is considerable delay caused by defendant no.1, 2, 3A, 3B and 3C, which needs to be compensated in terms of necessary costs. Hence, following order.

-: ORDER :-

- i) No written statement and evidence close order passed against defendant Nos. 1, 2, 3A, 3B and 3C are set aside subject to costs of Rs.400/- each, to be paid by the defendant Nos. 1, 2, 3A, 3B and 3C to the plaintiff on or before next date.
- ii) The payment of costs is *pre-condition* to take the written statement on record.

Place : Patan.  
Date :- 23/02/2024.

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