

R.C.S. No. 292/2012
(CNR No.MHST13-000905-2012)

Order Below Exh. 59

01. This is an application moved by the defendant No. 4A to 4C for setting aside no written statement order passed against them.

02. It is contended that, due to their illness and due to non availability of documents mentioned in the written statement they failed to appear before the Court and filed their written statement within limitation. If the application is not allowed and opportunity of filing written statement is not given to them, then it will cause irreparable loss to them. On all these grounds the defendant No. 4A to 4C prayed for allowing this application.

03. The application has been resisted by the plaintiff by filing say on the leaf of the application. The plaintiff has denied the reason for delay as not true and satisfactory. The plaintiff also submitted that, the delay was intentional. So the application may be rejected or be allowed with heavy costs of Rs.5,000/-.

04. Heard both learned advocates and gone through the record of proceeding. The application under consideration is supported by an affidavit. Admittedly there is considerable delay of nearly 10 months in filing written statement. It is basic principle of law that, no one should be condemned unheard. So it will be proper to decide it on merit after giving opportunity of hearing to both sides. It will also help the Court to avoid multiplicity of litigation. The defendant No. 4A to 4C claims that, due to their illness and due to non availability of documents mentioned in the written statement they failed to appear before the Court and filed their written statement within limitation. There is no reason to disbelieve the grounds put up in the application.

05. In view of natural justice and to decide the matter on

merit, defendant No. 4A to 4C is required to be given an opportunity of putting forth their defence. The procedural bottlenecks should not be allowed to come in the way of substantial justice. There is considerable delay in filing say due to which matter remained pending on the board. But, delay cannot be the only ground to reject the application. The plaintiff can be compensated by imposing cost on defendant No. 4A to 4C. Hence, in the result I pass following order:-

ORDER

1. No written statement order passed against defendant No4A to 4C is hereby set aside subject to costs of Rs.500/-.
2. The payment of costs is pre-condition to take the written statement on record.

Date : 30.11.2018.

(P.S.Patil)
Jt. Civil Judge, J.D.,
Patan