

ORDER BELOW EXH. 49 & 51 IN REG. CIVIL SUIT NO.189/15

1. As defendant No.1 to 3 have not filed their W.S and Say within time automatically delay is caused and “No W.S. & Say order” passed against them. Hence, they prayed for No Say Order set aside and condonation of delay caused in filing Written Statement and Say.

2. Defendants have contended that, the notice of said suit is served on them and matter is kept for filling of Say & Written Statement on 15/09/2015. However, due to talks of compromise with plaintiffs were going on, therefore, they failed to file their Say & Written Statement within time. Hence, they prayed for to condone the delay of 3 years and 7 months for filling Written Statement and Say.

3. Plaintiffs have filed their say to this application and contended that notice of said suit is served on defendants on 29/8/2015. However, defendants have deliberately avoided to file their W.S. because of prolonging the matter. Hence, plaintiffs prayed that application may be rejected. If application is allowed then heavy cost be imposed on defendants.

4. Heard both sides. Perused record of the proceeding. It is seen that, defendant No.1 to 3 was appeared in the suit on 15/09/2015. But, they failed to file their Written Statement and Say within stipulated time.

5. Here reference is required to be made of reported case of ***Sandeep Thapar V/s. S.M.E. Technologies Private Limited, 2014(3) Mh.L.J. 242 (S.C.)*** in which the Hon'ble Supreme Court ruled that, “extension of time for filing say can be given. The provision under Order VIII Rule 1 of the Code of Civil Procedure being in domain of procedural law, is directory and not mandatory.” In view of this case law, in my opinion Defendant No.1 to 3 shall get opportunity to put their defence in this suit. Besides, for to decide the suit on merits it is necessary to take defence of defendants on record. However, delay for causing filling to W.S

for the period of 3 years and 7 months. Hence, it is required to compensation cost be given to plaintiff in the interest of justice. Hence, I pass the following order.

ORDER

1. Application is allowed and Ex-party Order set aside.
2. Defendants No. 1 to 3 are allowed to file their Written Statement on record on payment of cost of Rs.1000/- each. Out of which Rs.2000/- payable to plaintiffs and Rs.1000/- shall be deposited in Legal Aid.

Phaltan
Date :16/08/2019

(Archana H. Thakur)
Civil Judge Jr. Div. Phaltan.

