

MHJN080011342022 	<u>ORDER PASSED BELOW EXH.32</u> (Passed on 24/04/2025)
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This is an application filed by defendant Nos.2 to 4 for setting aside “No Written Statement order” passed against them below Exh.01 on 22/08/2023. In support of contents of present application, an affidavit is filed at Exh.33 stating reasons for failure to file Written Statement.

2] Learned advocate for defendant No.1 submitted that, he has not filed written statement within stipulated period due to lapse so much time for obtaining some imp documents. In the interest of justice an opportunity of heard is required to given for the just decision of the matter. If the present application is rejected then he will be deprived for his valuable right to file W.S. Therefore he prayed to set aside No W.S. order.

3] Learned advocate for the plaintiffs filed his say overleaf the application and submitted that defendants have not mention suitable reason . Therefore, application be allowed with heavy costs.

4] Perused the application and say. Heard Ld. Advocate for both sides. Perused the record. As per Order VIII, Rule 1 of the Code of Civil Procedure, the defendant shall file his written statement within 30 days from the date of service of summons. On failure, he shall be

allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than 90 days from the date of service of summons.

5] The record shows that, defendant No.2 to 4 failed to file their written statement within stipulated time. Therefore no written statement order was passed against them. They have given reason for delay. So, considering the reasons in the application, I am of the opinion that, the non-filing of his written statement within statutory period is not intentional and deliberate. Further, now defendant no.2 to 4 are intending to proceed with and contest the suit by filing their written statement. It is settled principle of law that, no one should be condemned unheard. In the present case it is important to note that defendant no.1 filed his written statement along with the present application. It seems that seriousness of defendant Nos 2 to 4 to participate in the proceeding. Further, in order to settle the actual controversy between the parties and to decide the suit on merit, an opportunity needs to be given to defendants to put up their defence. Therefore, I am of the view that if application is allowed then no prejudice will be caused to the plaintiff. On the other hand it would be helpful to the court to decide the matter on merit. Hence, I pass the following order.

ORDER

1] The application is allowed with costs.

RCS No.317/2022

Rakhamaji & others Vs. Ambadas & others

2] The no written statement order passed below Exh.1 on 22/08/2023 against defendant Nos. 2 to 4 are hereby set aside subject to cost of Rs.300/- to be paid to the plaintiff.

Sd/-

(Smt. L. N. Panchal)

Jt. Civil Judge Junior Division,
Ghansawangi.

Date: 24/04/2025