

ORDER BELOW EXH.11 IN RCS No.58/2021.

(Kalawatibai +1 Vs. Ishwar)

1] The present application is filed by defendant for setting aside the order dated 14.12.2022 and for the permission to file written statement.

2] It is contended that, the suit is pending for evidence. The defendant had failed to appear due to Covid-19 and ill health. The defendant was tried to collect some documents regarding property and he failed to give instruction to the Ld. Counsel on his behalf. The Covid-19 situation is one more reason for the failure of the defendant to file written statement within prescribed period. Considering failure of the defendant, no written statement order was passed on 14.12.2022. Therefore, defendant appeared and prayed to set aside No written statement order and to file written statement to the present suit.

3] Plaintiff has filed his say on application itself and contended that, defendant was appeared before the Court on 29.07.2022. The No W.S. order was passed dated 19.11.2022. The defendant has availed various opportunities. Instead of that, he failed to produce his written statement in the prescribed period. Therefore, prayed to reject the same.

4] The present suit is for Declaration and Possession of the Encroached Portion alongwith Mandatory and Permanent Injunction. As consider contention of the both Ld. Counsel, the suit was instituted

dated 03.12.2021. However, defendant failed to appear and after appearance failed to file his written statement. Though, defendant has failed to show his due diligence and failed to file written statement within statutory and discretionary period prescribed by the Code of Civil Procedure, for the proper adjudication and to decide the suit of merit written statement of the defendant is necessary. However, plaintiff will have an opportunity to cross-examine defendant and arguments regarding all disputes between plaintiff and defendant. Therefore, it is just and proper to consider delay caused on behalf of defendant and opportunity must be given in the interest of justice. Hence, following order.

ORDER

- 1] Application is allowed.
- 2] No written statement order passed dated 14.12.2022 is hereby set aside.
- 3] No order to costs.

Date:- 27/01/2023
Seloo

(Geeta P.Bankar)
Civil Judge, Junior Division,
Seloo.