



ORDER BELOW EXH.52.

(Passed on 07/02/2024)

1. This application has been filed by the defendant No.5 seeking permission to file her written statement on record.
2. It is submitted that the defendant No.5 was not in contact with her advocate due to her illness and illness of her mother. Therefore, she mostly resided with her mother at Mouje Pimpalkhuta, Tq. Darwaha, Dist. Yavatmal. It is further submitted that the husband of defendant No.5 is serving in the Army. Therefore, she was not having the required documents to prepare written statement. As such, she had no information about those documents. Therefore, she could not convey the necessary information to her advocate required to prepare her defence.
3. Lastly, it is contended that due to non-filing of written statement within statutory period, the order of no-written statement came to be passed against defendant No.5 on 08/06/2023 below Exh.1. The defendant No.5 has good defence to put before the Court. Therefore, it is prayed that the impugned order dated 08/06/2023 passed against defendant No.5 be set aside and defendant No.5 be granted an opportunity to put her defence before the Court.
4. It is further submitted that no prejudice would be caused to plaintiff, if the instant application is allowed. On the other hand, defendant No.5 would be constrained to face hardship if her written defence is not taken on record. Hence, this application. The application is supported by an affidavit.
5. On the contrary, this application came to strongly resisted by the

plaintiff by filing say on the application itself. Wherein, it is contended that instant application is not tenable. As such, already the plaintiff has adduced his evidence and matter is pending for plaintiff's evidence. Moreover, an order of no cross-examination has been passed against the defendant. It is further contended that the defendant No.5 has been deliberately prolonging the matter which is old one, in order to cause mental and physical harassment to the plaintiff. Hence, prayed to reject the application with costs.

6. Heard both sides. Perused the application say and gone through the record.

7. Record shows that defendant No.5 was not initially added as a party to the suit by the plaintiff. However, by virtue of order dated 18/01/2022 passed by my learned predecessor on the application below Exh.37 defendant No.4 and 5 came to be added as a party to the suit. Record further reveals that, defendant No.5 appeared in the matter through an advocate on 16/03/2023. However, thereafter, she did not bother to file her written defence in the matter within statutory period. Therefore, this court by passing an order below Exh.1 dated 08/06/2023 proceeded with the matter further without written statement of defendant No.5 as well as *ex-parte* against defendant No.4.

8. It is seen that in this matter, the plaintiff has examined himself below Exh.44 in the Court on 28/07/2023. However, due to absence of defendants and their learned advocate the matter was proceeded without cross-examination of plaintiff. It is further seen that on 10/01/2024 plaintiff has filed an affidavit of evidence of his next witness PW-2 namely Sanjay Ratnappa Gorate. However, his evidence is yet to be adduced.

9. Though matter is proceeded up to the stage of plaintiff's evidence, but it is to be noted that initially defendant No.5 was not added in the suit by the plaintiff, and due to subsequent order of the Court, she came to be added as a party to the suit. Application is supported by an affidavit and considering grounds mentioned in the application, I do find substance in the assertions made in the application. And therefore, it prima-facie appears that

the defendant No.5 could not file her written statement in the Court without limitation period.

10. That apart, in order to avoid multiplicity of proceeding and to decide the controversy between the parties at once on merit, it would be necessary to grant an opportunity to defendant No.5 to put her written defence on record. Obviously, this would not cause prejudice to the plaintiff. On the other hand, it would be assisting the Court to adjudicate the matter on merit. However, at the same time the inconvenience caused to the plaintiff is required to be compensated. Hence, I proceed to pass following order -

ORDER

1. The application Exh.52 is allowed subject to costs of Rs.1,000/- (One Thousand Rupees Only).
2. The order dated 08/06/2023 passed against defendant No.5 is hereby set aside.
3. After the payment of the costs to the plaintiff written statement of the defendant No.5 shall be taken on record.

Date : 07/02/2024

Sd./-
(M. H. Haque)
Jt.Civil Judge (Jr.Dn.),
Karanja (Lad).

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word as per the original order.

Name of Steno. :- D.V. Daware (Stenographer Grade-III)
Court Name :- Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Karanja.
Dist. Washim.
Date :- 07/02/2024
Order signed by the :- 07/02/2024
presiding officer on
Order uploaded on :- 07/02/2024