

**Order below Exh. 46**

By this application the defendant is seeking permission to file his his written statement on record. The plaintiff by his say, simply opposed the application.

2. Perused record. Heard both sides. Ld. Advocate for the plaintiff submitted that, on his apperance the defendant filed application on 12/01/2017 under Order 7 Rule 11. Said applications at Exh. 10 and 11 are decided on 27/08/2021. Due to non filing of the W.S by defendant, no adverse effect on the instant proceeding is caused. This court has discretion to permit the defendant to place his defence on record. Hence, he prayed to allow this application. In support of the contention he relied upon 2020 ALL SCR 307, Deshran Vrs. Balkishan (D) thr. proposed LR, wherein, it is held that, "Amended provision of CPC are directory provisions. However, it does not allow defendant to file written statement at his will. Record showing that only defence for not filing written statement is that counsel was absent. No other justification was given for delay. Eventhough taking lenient view, delay condoned."

3. On other hand learned advocate for the plaintiff opposed the application stating that, the proceeding is of the year 2016. In support of his objection he relied upon the authority of Hon'ble Supreme Court of India, in the case of, M/s SCG Contracts India Pvt. Ltd Chamankar infrastructure Pvt. Ltd & Ors. [ Civil Appeal No. 1638 of 2019] Wherein it is held that, "pendancy of order 7 rule 11 application filed by the respondent infrastructure is not a valid ground for delay in filing written statement".

4. I have perused both the authorities. Observations therein are applicable to the facts of those respective cases. With regard to the contentions

of the parties in the instant application, upon plain reading of Order 8 Rule 1 the defendant has to filed his W.S. within thirty days from the date of service of summons. And thereafter within 90 days from the date of service of summmmons. No doubt, in the instant proceeding till today, there were several applications were pending, filed by both the parties. But pendency of such a applications do not extend the time for filing of the W.S. to the defendant nor it gives any justification to the defendant for non filing of his WS.

5. At present the defendant has placed his W.S. along with instant applciation. Instant suit is for Permanent Injunction. Considering, the nature of suit and as per the plaint there are earlier litigations between parties. Therefore, I am of the opinion that, if the written statment of the defendant is taken on record, it would be helpful for the court to settled down the issues between the parties and also to conclusively determine the rights between the parties. Admittedly, due to the delay in filing of the WS by defendant has caused inconveniency to the plaintiff. However, such inconvenience can be compensated by imposing appropriate costs. Hence the following order :-

**ORDER**

1. The application is allowed subject to costs of Rs. 1500/- to be paid by the defendant to the plaintiff.
2. On payment of the costs W.S. of the defendant be taken on record.

Karanja Lad :  
Date : 04/10/2021

Sd/-  
(K. K. Chaudhari)  
Jt. Civil Judge Junior Division  
Karanja, Dist. Washim

## 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. :- R. A. Charthal (Stenographer)

Court Name :- Jt. Civil Judge (Jr.Dn.) and  
J.M.F.C., Karanja. Dist.  
Washim.

Date :- 04/10/2021

Order signed by the :- 04/10/2021  
presiding officer on

Order uploaded on :- 09/11/2021