

R.C.S. No.43 OF 2023



ORDER BELOW EXHIBIT – 20

(Raju Trembak Jirvankar, etc-1 Vs. Nimbappa Parappa Sontake, etc- 3)

1. By filing present application defendant Nos.1 & 4 are seeking permission to file written statement by setting aside 'No W.S. order' passed on 01/11/2023 against them.
2. The plaintiffs by filing say overleaf of the application have taken strong objection.
3. Heard, Mr.VR.Lahoti, learned advocate for defendant Nos.1 & 4 and Mr.S.N.Magar, learned advocate for the plaintiffs.
4. Perused the application and say thereon. Perused the record and proceeding.
5. Mr.Lahoti, learned advocate for defendant Nos.1 & 4 submitted that in the present matter defendant Nos.1 & 4 have appeared. However, defendant Nos.1 & 4 could not collect relevant documents and supply necessary information within time to their learned advocate and due to which they failed to submit written statement within prescribed time. He further submitted that it is necessary to allow defendant Nos.1 & 4 to submit written statement on record of the suit. According to him, if defendant Nos.1 & 4 are not permitted to submit written statement then they will suffer irreparable loss which cannot be compensated. Hence, he prayed for setting aside 'No W.S. order' passed against defendant Nos.1 & 4 and

permission to submit written statement.

6. On the contrary, the plaintiffs have taken strong objection to the application and Mr.Magar, learned advocate for the plaintiffs submitted that in the present matter suit summons is served upon defendant Nos.1 & 4 on 25/07/2023 (Exh.9 & 11) and thereafter, time to time as per applications (Exh.8, 12, 13 & 15) the defendants sought time to file WS however, on 02/12/2023 defendants' application for time to file WS (Exh.19) was rejected and thereafter, also on 17/01/2024 the defendants have filed present application. He further submitted that there is no sufficient and satisfactory reason in the application for setting aside 'No W.S. order' passed against the defendants and reason mentioned in the present application is not true. According to him, present application is filed only to mislead the Court and therefore, the present application is not tenable in the eyes of law. Hence, he prayed for rejection of the application with heavy costs.

7. It is admitted fact that defendant Nos.1 & 4 were served on 25/07/2023 and they appeared in the suit through advocate on 26/07/2023. However, till 01/11/2023 they failed to submit written statement within 90 days from service of summons to them as stipulated in Order VIII, Rule 1 of CPC. Therefore, on dated 01/11/2023 this Court passed 'No W.S. order' against defendant Nos.1 & 4.

8. Perusal of application shows that present application is filed on 17/01/2024. There is near about 80 days delay for filing present application. However, no deliberate delay is found on record. Defendant Nos.1 & 4 filed affidavit to support their application and they have filed written statement along with present application on

record, therefore, reason mentioned in present application is found bonafide and sufficient. There is near about 80 days delay to file present application. In my humble opinion delay can be compensated. In totality of circumstances and in the interest of justice for fair trial, no too technical approach is to be taken and therefore, it is necessary to allow defendant Nos.1 & 4 to file written statement for deciding real dispute in the suit on merit. Hence, the order:

-: ORDER :-

1. 'No W.S.order' passed on dated 01/11/2023 against defendant Nos.1 & 4 is hereby set-aside & permission is granted to defendant Nos.1 & 4 to submit written statement subject to cost of Rs.400/- payable to the plaintiffs.
2. Needless to mention here that if defendant Nos.1 & 4 failed to deposit or make payment of cost within 30 days from this order, it is to be presumed that they are not interested to submit written statement and suit shall proceed further without their written statement.

Sd/-

(G.S.Badgujar)

Civil Judge Jr. Dv., Malegaon.

Date : 26/02/2024.

CERTIFICATE

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

Name of Stenographer	Shri. C. R. Lande (Grade III)
Name of Court	C.J.J.D. & J.M.F.C., Malegaon, District - Washim.
Date of Dictation	26/02/2024
Judgment/Order signed by the PO on	26/02/2024
Judgment /Order uploaded on	27/02/2024