

Leave granted.

Heard learned counsel appearing for the appellants. Despite service of notice, the respondent has not entered appearance and, therefore, we proceed to hear the counsel appearing for the appellants.

By filing this appeal, the order passed by the Trial Court which is affirmed by the High Court is challenged.

A suit was instituted by the respondent in which the defendant could not be served through the ordinary process but finally defendant was served by publication of notice in newspaper on 7th September, 2008. Immediately thereafter, the defendant entered appearance and filed his Vakalatanama but the written statement was not filed by the defendant within the prescribed statutory limit. There was a delay of about 270 days in filing the written statement from the date of service of the summons. In that view of the matter, it was ordered that the written statement shall be taken off the record as it was not filed within the statutory period as provided for and also because no application for extension of time was made to the Trial Court. The written statement, however, stands filed on 1st May, 2009 which is, of course, after about nine months of service.

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Considering the facts and circumstance of this case, and also the fact that the Presiding Officer was on leave, therefore, there was delay in filing the written statement. Since the averments made in the present appeal are also not controverted, we accept the prayer in the appeal and set aside the orders passed by the High Court and also by the Trial Court with a direction that the written statement filed on 1st May, 2009 be taken on record and the suit be tried from that stage but the hearing shall be done as expeditiously as possible. If in case the appellants fails to co-operate in the early disposal of the suit, it shall be open to the Trial Court to proceed against the appellants in accordance with law. It is also made clear that the order of taking the written statement on record is subject to the condition of the appellants depositing Rs. 20,000/- with the Trial Court as cost within four weeks from today. As and when such amount is deposited, the same shall be paid to the plaintiff respondent immediately thereafter. The amount of Rs. 10,000/- which is deposited by the appellants before the High Court shall be allowed to be withdrawn by the appellants immediately.

Subject to the aforesaid condition, the present appeal is allowed to the aforesaid extent. The trial shall proceed in the matter expeditiously. We also make it clear that this order is passed in the peculiar facts and circumstances of the case and shall, however, not be treated as a precedent in any other case.

.....J.
(DR. MUKUNDAKAM SHARMA)

.....J.
(ANIL R. DAVE)

APRIL 18, 2011