

R.C.S. No.1/2018
(CNR No. MHST13-000018-2018)

Order Below Exh.31

01. This is an application moved by defendant No. 1 for setting aside no written statement order passed against him.

02. It is contended that, due to his old age and health issues and also due to non availability of documents mentioned in the written statement he failed to appear before the Court and to file his written statement within limitation. If the application is not allowed and opportunity of filing written statement is not given to him, then it will cause irreparable loss to him. On all these grounds defendant No. 1 prayed for allowing this application.

03. The application is resisted by the plaintiff by filing say overleaf of the application. The plaintiff has denied the reason for delay as not true and satisfactory. The plaintiff also submitted that, the delay was intentional. There is delay of more than 1 year. So the application may be rejected or be allowed with heavy costs of Rs.3,000/-.

04. Heard both learned advocates and gone through the record of proceeding. The application under consideration is supported by an affidavit. Admittedly there is delay of more than 1 year in filing written statement. It is basic principle of law that, no one should be condemned unheard. So it will be proper to decide it on merit after giving opportunity of hearing to both sides. It will also help the Court to avoid multiplicity of litigation. Defendant No. 1 claims that, due to his old age and health issues and also due to non availability of documents mentioned in the written statement he failed to appear before the Court and to file his written statement within limitation. There is no reason to disbelieve the grounds put up in the application.

05. In view of natural justice and to decide the matter on

merit, defendant No. 1 is required to be given an opportunity of putting forth his defence. The procedural bottlenecks should not be allowed to come in the way of substantial justice. There is considerable delay in filing written statement due to which matter remained pending on the board. But, delay cannot be the only ground to reject the application. The plaintiff can be compensated by imposing cost on defendant No.1. Hence, in the result I pass following order:-

ORDER

1. No written statement order passed against defendant No. 1 is hereby set aside subject to costs of Rs.1,000/-.
2. The payment of costs is pre-condition to take the written statement on record.

Date : 04.09.2019

(P.S.Patil)
Civil Judge, J.D.,
Patan