

ORDER PASSED BELOW EXH. 36 IN SPL.CIVIL SUIT NO.511/2013

This is an application by defendant corporation praying for setting aside No W.S. order and allowing him to file his written statement by condoning the delay caused for filing the same. The plaintiff has filed his say on the application.

2. Perused the application and say. Heard the Advocates for the parties at length.

3. The defendant intends to get set aside exparte order and file his written statement. The question is whether the exparte order passed against defendant should be set aside and he should be allowed to file his written statement at this stage.

4. If the stage of the suit is looked into most of the defendant has filed its written statements. However, issues are not framed and the suit is not riped for hearing.

5. The procedure as to limit for filing written statement and consequences of not filing the same are given in Order 8 of Civil Procedure Code. Order 8 Rule 10 of the C.P.C., has laid down a procedure about passing of a decree in favour of the plaintiff, if defendant fails to file his written statement. This discretion is not exercised by the court in favour of the plaintiff for the reason of failure of defendant to file its written statement.

6. In this background, if exparte order passed against defendant is set aside and he is allowed to file his written statement it will not cause any prejudice to either plaintiff or to the overall hearing of this suit. If the

defendant is allowed to file written statement and if the suit the decreed in favour of the plaintiff, it would be a decree on merit. On the other hand, if the defendant is not allowed to file his written statement, it would result into a decree which would be technically ex-parte decree. Therefore, this court is of the opinion that hearing of the suit has not began and therefore, this defendant should be allowed to file his written statement in order to enable this court to decide the suit on merit.

7. There is one more reasonable important point and i.e. the extent of the delay if it is the delay for almost more than one year. However, this court is of the opinion that for the stated reasons the defendant is to be allowed to file his written statement. Filing of written statement by the defendant beyond the prescribed period of time framed has not caused any serious prejudice to the plaintiff. Hence, the order.

:ORDER:

1. The application is allowed.
2. Defendant is allowed to file his written statement in the interest of justice.

Thane.
Date:05.01.2016

(Smt. S. G. Shaikh)
4th Jt. Civil Judge, S.D., Thane.