



ORDER BELOW EXH.183

1] Read an application and say filed by learned counsel for plaintiff. Perused the record. Heard the learned counsel for defendant No1 Adv.Shri Totawar and the learned counsel for plaintiff Adv.Shri Pottala.

2] On perusal of record, it appears that the defendant No.1 appeared on 06-02-2018 through his counsel but he has not file written statement till today. Many of the defendants also appeared but, they have not filed written statement till today. My learned predecessor passed an order on 20-04-2018 and the suit is proceeded without written statement of defendant No.1.

3] On perusal of record, it also appears that the temporary injunction application is pending. No any defendant also filed a reply to the temporary injunction application till today. The temporary injunction application is not decided because of the absence of defendant No.26, 27 and 28. No any counsel for defendant also argued upon the temporary injunction application.

Now, the defendant No.1 filed this application and prayed to set aside 'no written statement' order which is passed by my learned predecessor on 20-04-2018. He is also seeking

permission to file the written statement. However, on perusal of

-2-

entire record, it appears that the defendant No.1 has not file his written statement since about one year from his appearance.

I read the Order VIII, rule 1 of the Code of Civil Procedure. Order VIII, rule 1 provides that the defendant shall present his written statement of his defence within 30 days from the date of service of summons. It is also provided that when the defendant fails to file the written statement within 30 days he shall be allowed to file the same on such other day but, he shall not be later than 90 days from service of summons.

On reading rule 1, order VIII of Code of Civil Procedure, there is the mended that the defendant shall filed his written statement within 90 days if he fails to file written statement within 30 days. In view of this, it came on record that the defendant No.1 has not file written statement within the prescribed period. However, if the permission will not be granted to defendant No.1 to file written statement, he will be caused loss. The suit also cannot be decided on merit. Therefore, in order to decide the suit on merit, it is necessary to grant permission to defendant No.1 to file the written statement. On the other hand, it is also necessary to compensate to the plaintiff. Due to the absence of written statement as well as reply the temporary injunction application is pending. Therefore, in my view, it is necessary to impose costs upon the defdefendant . The defendant No.1 is liable for the payment of costs to plaintiff. Accordingly, I proceed to pass the following order.

ORDER

- 1] The application is allowed.
- 2] No written statement order against defendant No.1 passed on 20-04-2018 be set aside subject to costs of Rs.2,000/- payable by the defendant No.1 to the plaintiff till next date.
- 3] The defendant No.1 is permitted to file the written statement till next date after payment of costs, failing which this application automatically shall be rejected.
- 4] Both the parties are directed to take note of it.

Sd/-

Sironcha.
Dt.06.02.2019.

(D. D. Fulzele)
Civil Judge (Jr.Dn.),
Sironcha.