



A.No.5539 of 2022 in

TOS.No.7 of 2000

R.N.MANJULA,J.

The applicants are the defendants 2 and 3. This application has been filed to set aside the exparte order dated 15.07.2022 passed in TOS No.7 of 2000 against the applicant / defendants 2 and 3 due to their default in filing their written statement in time.

2. The learned counsel for the applicants submitted that due to miscommunication between the applicants and their counsel, due instructions cannot be given to the counsel for the purpose of filing the written statement and in the interest of justice, an opportunity should be given to the applicants by setting aside the exparte order and also by allowing the defendants to file their written statement.

3. The learned counsel for the first respondent / plaintiff submitted that the delay in filing the written statement is very huge and it is 4476 days and further submitted that the reasons stated by the applicants to condone such an inordinate delay is not satisfactory and reasonable.



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4. No doubt the applicants have filed the application after the delay of several years. But strangely, the TOS is still pending and it has not been disposed. Taking into consideration of the pendency of the TOS, I feel an opportunity can be given to the applicants in order to avoid any technical difficulties that might arise in future. However, the inordinate delay on the part of the applicants have caused hardship and prejudice to the first respondent / plaintiff who had filed the above TOS and waiting to get the fruits of her efforts for nearly 23 years. Taking into consideration of the extraneous circumstances involved in this matter, I feel it is appropriate to allow this application on payment of cost.

5. Accordingly, this application is allowed on payment of cost of Rs.10,000/- to the first respondent / plaintiff which is also paid immediately by the applicants.

27.04.2023

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