


MHAH050007922022 	<p style="text-align: center;"><u>Reg.Civil Suit No.260 /2022.</u> <u>Minakshi Anantrao Bingi</u> Vs. Chandrakant Tulshiram Sagam</p>
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ORDER BELOW EXH.49 and 52

These two applications are filed by defendant no.5 and 6 with same set of contentions for setting aside ex-parte order dated 19.04.2024 and for setting aside no written statement order passed against them due to their default in appearance in the proceedings, in spite of service of summons.

2. In support of the applications these defendants have submitted that, the summons of the suit were served upon them by way of registered post. They were not duly served with the suit summons and therefore, the proceedings were continued in their absence. They have received the information of the proceedings and immediately approached the Court. According to them, they must get an opportunity to appear and contest the proceedings as their vital interests are involved in the case. Therefore, they prayed for allowing the applications and setting aside the ex-parte orders as well as to file their written statements on record.

3. The plaintiff vide her say to the applications has contended that, the defendants have appeared in the suit exactly after one year of the service of summons. There are no justifiable reasons given by the

defendant nos. 5 and 6 in appearing in the suit at such belated stage and for filing their written statement on record. According to the plaintiff, the applications are not justifiable under any circumstances and in the event of allowing the same, cost of Rs.20,000/- be imposed on the defendants.

4. Heard learned counsel for both the parties.

5. The applications of the defendant nos. 5 and 6 are filed with two prayers. First is of setting aside ex-parte orders and second is in respect of setting aside no written statement orders. As far as, the first ground is concerned, it is governed by the provisions of Order IX Rule 13 of Civil Procedure Code. The parameter for setting aside ex-parte order is of showing sufficient cause which prevented the party from appearing in the suit. As far as this parameter is concerned, the defendant nos.5 and 6 contended that, they were deemed to have been served with suit summons on the basis of report of registered post. As per settled position of law, the report of registered post is not a good service report. It is an alternate mode of service of summons. Therefore, this may be a good ground for setting aside ex-parte order.

6. As far as the setting aside of no written statement order is concerned, it is governed by the provisions of Order VIII Rule 1 of Civil Procedure Code. As per the said provisions, the defendants were expected to file their written statement within 30 days of service of summons and at the most within 90 days as per the proviso of Order

VIII Rule 1 of the Civil Procedure Code. As noted earlier the parameters of Order IX Rule 13 and Order VIII Rule 1 of Civil Procedure Code are different and therefore, the applications under both the provisions needs to be considered on different footings. However, considering the fact that, the alternate mode of service of summons was relied upon for concluding the service of summons on the defendants and accordingly, their reason for setting aside ex-parte order is considered as sufficient cause, the said reason becomes the basis for accepting their written statement after 90 days by exercising judicial discretion of the Court for accepting the written statement at belated stage, in exceptional circumstances. In spite of such facts, the delay caused in filing the present applications is inordinate and therefore, they must be saddled with heavy costs. Accordingly, I proceed to pass following order :-

ORDER

1. Application Exh.49 and 52 are allowed with cost of Rs.2000/- each on defendant nos. 5 and 6.
2. The ex-parte orders against defendant nos. 5 and 6 are set aside and the written statement of these defendants is taken on record subject to payment of costs on or before next date.

Date: 25/03/2025

(R.B.Giri)
Civil Judge Sr. Division,
Shrirampur.