

ORDER BELOW EXH.12
(MHAH08000908-2022)

This is an application filed by defendant Nos.1 to 6 for setting aside 'Ex-Parte' order passed against them by condoning delay caused for submitting written-statement on their part in answer to plaint (Exh.1). As per application, they failed to appear in the suit after service of suit summons. The suit is instituted for a decree of partition. Thus, they will suffer irreparable loss, if their written-statement is not taken on record. Out of these defendants, some are agriculturist and some are residing out of station for service purpose. Thus, the delay is caused, which was not intentional on their part. Hence, they urged to allow application.

2. The plaintiffs have opposed application by filing say through their learned advocate on leaflet itself. They submit that, the contents of application are not true and correct. Likewise, the grounds set out in the application are not proper. The suit summons duly served to these defendants on 27/02/2023. As such, there is about 2 years delay caused on their part for prosecution of the suit. The present application is filed, when the matter was fixed for evidence. Hence, they urged to reject application or in alternative prayed for imposing maximum costs, if the application is allowed.

3. Heard, the learned advocate Mrs. M. A. Pawar, for the plaintiffs. She argued almost all the facts, which are pleaded by her clients in say, as mentioned supra. None appeared on behalf of applicants/defendants, when called out for tendering an argument on this application at 12.35 pm. On considering the nature of suit and the application, it taken up for disposal on merit.

4. Perused application, say and record of the case, minutely. The contents of application are supported by an affidavit

of defendant No.2 Viz., Changdeo Bhagaji Khemnar vide Exh.13. Record shows that, the suit summons have duly served to defendant Nos.1 to 3 & to defendant Nos.4 to 6 on 27/07/2023 and 10/11/2023 respectively vide Exh.8. They made appearance through advocate and filed present application on 02/01/2025. It is matter of record, the suit is ordered to be proceeded ex-party against the defendants vide order passed below plaint (Exh.1) on 20/01/2024. Thus, there is more than one year delay caused.

5. The suit is instituted for a decree for recovery of encroached portion of suit land, if found in the measurement with consequential relief of perpetual injunction. The subject matter of the suit is agricultural landed properties situated at village Sakur, Tal. Sangamner, Dist. Ahmednagar. Its always desirable to adjudicate such dispute on merit. The written-statement proposed to be placed on record on behalf of these defendants, is enclosed with this application itself. So, application will have to be allowed, with costs. In the result, I pass following order -

ORDER

1. Application (Exh.12) is allowed, subject to costs of Rs.800/- payable to the plaintiffs.
2. By setting aside ex-party order passed below plaint (Exh.1) against these defendants and by condoning delay, they are permitted to submit written-statement, as sought for.
3. These defendants shall make necessary compliance regarding incorrect suit number mentioned on written-statement proposed to be brought on record.

Date : 14/02/2025

(S. S. Budruk)
Civil Judge Sr. Division,
Sangamner.