

ORDER EBLow EXH-32 IN REGULAR CIVIL SUIT NO.24/2013

This is an application by defendant Nos.5 and 8 to set aside No W.S. order passed against them.

The application, in brief, is as under :-

02. The suit is for perpetual injunction. Defendant Nos.5 and 8 served with summons and they filed application below Exh-24 for extension of time to file V.P. and written statement. The Court allowed the application and given time to said defendants. But, defendant No.5 is serving as driver at Pune and defendant No.8 is also serving in private company. Therefore, they failed to remain present for filing V.P. and W.S. Accordingly, the Court passed No W.S. order. But, the defendants have not made intentional delay for filing V.P. and W.S. If the application is not allowed, it will cause irreparable loss to defendant Nos.5 and 8. Hence, they prayed to set aside No W.S. order passed against them.

03. The plaintiff field say below Exh-34 and strongly contested the application. According to the plaintiff, said defendants served on 06.06.2013. The defendants are not serving at Pune. The application is filed to delay the effective hearing of the suit. Hence, claimed rejection of the application.

04. Perusal of record goes to show that defendant Nos.5 and 8 served vide Exh-14 on 06.06.2013. Accordingly, on 03.07.2013, the application came to be moved by Ld. Advocate on oral intimation of said defendants for extension of time to file V.P. and W.S. That application is came to be allowed. Then, the suit is fixed on

26.07.2013. But, said defendants are remained absent and lastly on 17.08.2013, No W.S. order is came to be passed against defendant Nos.5 and 8. On both subsequent dates, there was no application by Ld. Advocate for time to file W.S. or V.P. Then after six months from that order, the present application is came to be filed for setting aside No W.S. Order. But, there is no proper explanation by defendant Nos.5 and 8 for delay caused to file written statement within the time. Moreover, pursis on record goes to show that defendant Nos.5 and 8 have not put forth their separate case, but are intending to adopt written statement of defendant Nos.1 and 7.

05. However, the suit is for fixation of four boundaries of the suit property alongwith consequential relief of perpetual injunction. Defendant Nos.5 and 8 are having properties to north side of the suit property and there is allegation of encroachment at their hands. In circumstances, to decide the suit at once and on merit, the necessary opportunity should be given to said defendants. Otherwise, it would cause to throw the defendants at the threshold without going into meritorious inquiry of the suit. Considering, delay caused for filing written statement, it can be compensated by way of costs. The present application has been filed near about after eight months from service of summons. In circumstances, costs of Rs.300/- each should have been saddled on the defendants as they have adjusted Court time as per their whim. Hence, the order.

ORDER

01. No W.S. order is hereby set aside subject to costs of Rs.300/- (Rupees three hundred only) each.

02. Failing to pay costs till next date, this order automatically stands vacated and no further application will be entertained in this regard.
03. Costs on cause.

Date : 05.08.2014
Place : Shevgaon

(P. S. Shinde)
Jt. Civil Judge J.D., Shevgaon.