

ORDER BELOW EXH. 24 IN RCS. NO. 550/2022
(MHAH1900 2056 2022)

01. Defendant no.2 moved this application and prayed to set aside NO WS order passed against him. Defendant no.2 has submitted that he suffered viral infection due to which he could not attend the court hearing date and failed to file his WS within stipulated period. It is further submitted that he has not purposefully prolonged the matter. It is necessary that written statement of defendant no.2 to come on record. Hence, he prayed that application be allowed.

02. Plaintiff filed say overleaf the same application and stated that the defendant has not filed on record the medical certificate to show that he was suffering from viral infection. Application is filed only to prolong the matter. Hence, application be rejected.

03. Heard. Perused record.

04. The suit is filed for partition and injunction. On perusal of record it seems that NO WS order is passed against defendant no.2 on 16-08-2023. Defendant no.2 appeared before the court by filing Vakalatnama on 28/03/2023. Defendant no.2 has filed present application on 03/10/2023. Defendant no.2 has availed sufficient opportunity to file this application. Defendant no.2 has submitted on oath that he was suffering from viral infection so, he could not file WS within stipulated period. The suit is related to partition of immovable property hence, say of every party should come on record for effecting partition and to decide share of each party. So also for fair trial and proper decision of the suit, WS of each litigant must come on record. Looking to the nature of suit and relief against defendant, the written statement of defendant no.2 is necessary to come on record to avoid multiplicity of proceeding. However, defendant no.2 has made delay to file instant application, therefore, it is necessary to impose cost. Hence, I pass the following order.

ORDER

Application is allowed subject to cost of Rs. 100/- to be paid by defendant no.2 to the plaintiff.

Place : Shevgaon
Date : 03/11/2023

Sd/-
(S. U. Jaguste)
Civil Judge Junior Division,
Shevgaon.