

ORDER BELOW EXH. 224 IN R.C.S.NO.215/2004
(CNR MHAH23-000263-2004)

1. The present application moved by the defendant No. 3 for setting-aside no W.S. order passed in respect of counter claim of defendant nos. 10 to 19 against him.

2. As per the defendant, at the time of judgment of the present suit, the defendant nos. 10 to 17 appeared before the court to implead them in the present suit. Moreover, the permission was also granted to them to file counter claim. Thereafter, though the defendant nos. 18 and 19 were not came before the court, they were also impleaded and allowed to file counter claim. The copies of the counter claim were not provided to the present defendant. The said fact was concealed from the present defendant. Therefore, on the complaint of the present defendant, the court directed to provide copies of the counter claim to the present defendant. Therefore, due to above circumstances the present defendant was unable to file written-statement in time. Hence, he prayed to grant permission to file written-statement to the said counter claims.

3. The defendant nos. 10 to 19 who are the plaintiffs in the counter claim contested the present application by stating that the reason mentioned by the defendant is incorrect. After the filing of counter claim the matter is part heard. Thus, only to prolong the matter, defendant has not filed his written statement. Hence, they prayed to reject the application.

4. By considering the rival allegations by the parties, following points arises for my determination to which I record findings for the reasons stated thereunder :-

S.No	POINTS	FINDINGS
1	Does defendant No. 3 prove that there is sufficient cause for setting-aside the no W.S. order ?	In the Affirmative
2	What order	As per final order.

REASONS

AS TO POINT NO.1 :-

5. It is material to note that the defendant nos. 10 to 19 appeared in the present matter and filed their counter claim. The Ld. Advocate Shri. Phadnis fairly submitted that on the complaint of present defendant no. 3 he has provided copies of counter claim to him. Therefore, the contention raised by the present defendant no. 3 cannot be disbelieved. Moreover considering the dispute between the parties if fair chance is given to the present defendant to defend the counter claim then it will meet ends of justice. Moreover, if the defendant no. 10 to 19 are compensated by awarding cost it will also meet ends of justice. Hence, in the interest of justice, application deserves to be allowed. Hence, I answer point no.1 in the affirmative and I proceed to pass following order.

ORDER

- 1 The application (Exh. 224) is hereby allowed on payment of cost of Rs. 1000/- to the defendant nos. 10 to 19.

- 2 The defendant No. 3 is further directed to pay the cost till next date and failure to comply, leads to rejection of present application.

Shrigonda.
Date : 18/04/2018.

(K. M. Kayangude)
Civil Judge Senior Division,
Shrigonda