

ORDER BELOW EXH.73 IN R.C.S. NO.245/2017

1. The present application moved by the defendant No.8 for setting-aside ex-parte order passed against him.

2. As per the defendant, due to his transfer the present defendant failed to appear in the present matter. In order to decide the matter on merit it is necessary to allow the present defendant to defend the suit. Hence, defendant prayed to set aside ex-parte order.

3. The plaintiff contested the present application by stating that the reason mentioned by the defendants is incorrect and there is no evidence to support the said reason. Therefore, the application itself is not maintainable. Hence, he 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.N.	POINTS	FINDINGS
1	Does defendant No.8 prove that there is sufficient cause for setting-aside the ex-parte 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 suit summon was served on present defendant on 20/06/2018 and ex-party order is passed on 27/07/2018. The defendant specifically contended that, due to his transfer he was unable to attend the Court. The said fact is also

supported by affidavit of the defendant No.8 on oath. Therefore, considering the facts and circumstances, in my considered view, the reason put-forth by the defendant cannot be disbelieved. The suit is for declaration and perpetual injunction in respect of immovable property. Therefore, in order to decide the matter on merits, it is necessary to give fair chance to the defendant to defend the suit. Hence, in the interest of justice, application deserves to be allowed. Moreover, it will be fit to compensate the plaintiff by awarding cost. Hence, I answer point no.1 in the affirmative and I proceed to pass following order :-

ORDER

- 1 The application (Exh.73) is hereby allowed on payment of cost of Rs.1000/- to the plaintiff.

- 2 The defendant is further directed to pay the cost within 14 days and failure to comply, leads to rejection of present application.

Shrigonda.
Date : 19/01/2019.

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