

**ORDER BELOW EXH.33 IN RCS NO.276/2019**

( CNR : MHAH250007302019 )

This is an application filed by the defendant No.1 Manjabapu for setting aside the *ex-parte* order dated 05.02.2020 passed against him vide Exh.1. The application is accompanied with the affidavit of the present defendant.

2. It is the contention of the present defendant that, the summons was duly served upon him. However, he is suffering from various ailments due to his age and he has to stay in the hospital for medical treatment, therefore, he is unable to file his written statement within stipulated time. It is his further contention that if the *ex-parte* order passed against him would not be set aside, it would cause irreparable loss to him. He would be deprived from the natural justice. Thus, on the aforesaid grounds he prayed for setting aside of *ex-parte* order passed against him and allowing his written statement on record.

3. The plaintiff has filed his say overleaf. It is his contention that the present application is not true. Present defendant has not filed any medical certificate on record for the reasons mentioned in his application. Therefore, he prayed for rejection of the application. In the alternative, he prayed to allow the application, however, subject to imposition of heavy cost.

4. I have gone through the record of the suit. It is seen that the summons was served on the present defendant on 10.05.2019. However,

he has failed to file the written statement within the stipulated period. Therefore, *ex-parte* order has been passed against him on 05.02.2020. It is to be noted that the present suit has been filed for partition and declaration. The present defendant has filed his written statement alongwith the application. The dispute in plaintiff and defendant is in respect of immovable property. The present defendant needs to be heard in order to decide the suit on merit. The inconvenience, if any, caused to the plaintiff could be compensated. Having taken into consideration the delay caused by the present defendant and the contents of the application, in the interest of justice, following order is passed.

### **ORDER**

1. Application (Exh.33) is allowed subject to cost of Rs.300/- (Rs. Three Hundred Only) paid to plaintiff.
2. *Ex-parte* order dated 05.02.2020 vide Exh.1 passed against the defendant No.1 is hereby set aside.
3. After payment of the said cost, the written statement of the present defendant be taken on record.

Date : 29.11.2021

(Mayura V. Nimbalkar)  
2<sup>nd</sup> Jt. Civil Judge Junior Division,  
Parner.