

MHAU060000762014



ORDER BELOW EXH.77 IN RCS NO.2/2014

1. The defendant no.1A and 2 have filed this for setting aside "No W.S." order passed against them. The defendant no.1A and 2 contended that the advocate for defendant no.1A and 2 have not filed their say and W.S. On last date, when the matter was called out for hearing. The advocate for the defendant no.1A and 2 has met with an accident and hospitalized in GHATI, hospital, hence the advocate for the defendants has not caused his appearance and placed on record the say and W.S. Of the present respondent within time. Therefore, the defendants could not mark their presence and filed their say and W.S. On record. Considering the absence of respondent no.1 A and 2 and they failed to file their W.S. in the limitation period as is set in the limitation Act. Therefore, the Court has passed No Say/WS order against them.

2. It is contended that one of the basic connotations of principle of natural justice is "audi alteram partem". The Judgment and Decree passed without following the natural justice is therefore, violating the precious right of the defendants. Therefore, prayed to allow the application.

3. The plaintiff has filed his say below Exh.82 and strongly objected the application. The plaintiff contended that the application is baseless and there is no reasonable ground mentioned in the application. The No W.S./exparte Order has been passed against the defendant no.2 on

18.12.2015 and against the defendant No.1A on 24.02.2023. Therefore, the application is barred by order 8 rule 1 of the C.P.C. It is contended that the suit is filed in the year 2014 and order against defendant no.2 has been passed on 2015. however, the defendants have not explained the delay caused since 2015. The Court has already granted sufficient opportunity to the defendants since 7 years. One who ignores the law cannot be entitled to seek help of equity. Hence, prayed to reject the application with costs.

4. Perused the applications and say. Heard learned advocates for both sides.

5. The suit is instituted for declaration of ownership and declaration that the sale deed no.1472 dated 27.03.2014 is not binding on the plaintiff. It appears from the record that suit summons was issued to the defendant no.2 time to time but it was not served upon her on regular mode. Therefore, as per order below Exh.36 summons was issued against her under O.5 R.20 (1A) of the C.P.C. In daily lokmat newspaper dated 17.07.2015 which is filed at Exh.40. In spite of that the defendant no.2 remained absent therefore, my learned predecessor has passed ex-parte order against the defendant no.2 on 18.12.2015. Thereafter, the defendant no.2 appeared in the Court on 23.01.2023 through her advocate and filed this application on 17.04.2023. Further, the defendant no.1A is the heir of the deceased of defendant no.1. The defendants no.1A is taken on record as per amendment carried out on 22.06.2022. Thereafter, the suit summons was served to defendant no.1A on 19.01.2023 and she appeared in the Court through advocate on 27.01.2023. However, she has failed to filed their written statement, therefore "No W.S." order passed against her on 24.02.2023. Present defendant no.2 and 1A have assigned the reason that the advocate of the defendants has met with an accident and

hospitalized in the Government Hospital, Aurangabad. The defendants have filed the medical documents of their advocate along with list Exh.80 which prima facie shows that the advocate of the defendants had taken treatment in the Government Hospital, Aurangabad 16 and 20 March 2023. Though we consider the reason that the advocate for the defendants has taken treatment in the hospital. But the said reason can be consider to the extent of delay caused to the defendant no.1A. The said reason is not sufficient to condone the delay caused to the defendant no.2. Because ex-parte order was passed against the defendant no.2 on 18.12.2015 and since then the defendant no.2 did not appear in the Court for more than 7 years. It is settled law that delay should be condone where it is explain properly. In the case in hand the reason given by the defendant no.2 does not appears to be reasonable.

6. However, it is pertinent to note that the in the present suit the summons to the defendant no.2 was served though substituted service under Order 5 Rule 20 in the newspaper filed below Exh.40 as per order below Exh.36. It means the summons to the defendant no.2 was not served through regular mode. Though we presumed that the summons was not served to the defendant properly, but in the application the defendant no.2 has not contended that how she came to know about the suit. She nowhere contended that why she has not appeared in in the Court for 7 years. She simply given reason that her advocate has met with an accident. But she appeared through advocate in the year 2023, prior to that she never appeared in the Court. Therefore, we can presumed that the defendant no.2 has knowledge about the suit since beginning but she avoided to appear in the Court.

7. It is pertinent to note that the suit is already part heard and

pending for further evidence of plaintiff. Now if the application is allowed it will certainly take the suit on the back foot. However, if we consider the nature of the suit it reveals that the plaintiff is seeking declaration of ownership on the suit property and the sale deed is not binding on him. The right of immovable property is involved in the suit. In such circumstances it is necessary to decide the suit on merit. Therefore, it is necessary to give chance to the defendants to defend their side. No prejudice will be caused to the plaintiff if the application is allowed. It will help to decide the matter on merit. But at the same time it is necessary to impose cost on the defendants for the delay caused to them to file their W.S. Hence, considering all these reasons, I have passed following order.

ORDER

1. The application below Exh.77 is allowed subject to costs of Rs.3000/- (Rupees Three thousand only)
2. Out of the Cost amount, Rs.2500/- (Rupees Two thousand five hundred) shall be paid by the defendant no.2 and Rs.500/- (Five hundred) shall be paid by the defendant no.1A to the plaintiff.

Date: 16.09.2023

(P. M. Kolse)
Civil Judge, J.D.,
Kannad.

CERTIFICATE

"I affirms that the contents of this PD.F file orders are same word for word as per original order.

Name of Steno : Yogesh Suresh Mali, Stenographer (III)

Court Name : Shri. P. M. Kolse, C.J.J.D. & J.M.F.C.,
Kannad, Aurangabad

Date : 16.09.2023

Order signed by presiding officer on : 16.09.2023

Order uploaded on : 18.09.2023