

MHAU080013582023



R.C.S./239/2023

Shivraj Kisan Patil Vs. Krushna Dattu Chape

ORDER BELOW EXH. 16

This is an application for setting aside No-W.S. order passed against defendant No. 4 & 5.

02. It is submitted that, on previous date defendants could not file their written statement, as they were out of station for medical purpose of defendant No. 4. In mean time this Court passed No-W.S. and no-say order against them. Their conduct is not intentional than accidental one. If the said order is not set-aside they shall suffer irreparable loss. Hence, it is prayed for granting the very application.

03. Since 12/02/2025 the say of plaintiffs was called upon. But, no say is filed so far. Hence, the say of plaintiffs is dispensed with.

04. Perused the application and record in hand. It appears that, plaintiff No. 1 to 3 filed present suit against defendant No. 1 to 5 for seeking possession of encroached portion of suit property. It appears that, the suit is being proceeded ex-parte against defendant No. 2 and without W.S. against defendant No. 1, 3, 4 & 5. This is application filed by only defendant No. 4 & 5.

05. Record shows that, defendant No. 4 & 5 caused their appearance vide Exh. 10 on dated 18/08/2023 through Adv. V. I. Mandalecha and they sought time to file their written statement by order vide Exh. 12. The present application is filed on dated 12/02/2025 after plaintiffs adduced evidence affidavit of PW-1 vide Exh. 15 on dated 08/08/2024. It means that, after causing appearance after near about one and half year defendant No. 4 & 5 filed this application on the ground that, defendants were out of station for the medial purpose of defendant No. 4. No where it is cited that because of what defendant No. 4 was suffering and for how much period and where she took treatment. Even no single document is filed on record to substantiate the reason. The way, vividly it appears that defendant No. 4 & 5 tried to prolong the case and harass plaintiffs.

06. Now, the only thing is that, the suit is filed for possession of encroached portion of suit property. As such, in order to decide controversy between parties all concern shall be given fair opportunity to defend the case. But, at the same time it shall be born in mind that, erring party shall be saddled with cost so that in future no such futile attempt shall be practiced. Accordingly, I pass following order :-

ORDER

1. The application vide Exh. 16 is hereby allowed subject to cost of Rs. 1,000/-, payable to legal aid, Sillod.
2. No-W.S. order dated 17/10/2023 passed against defendant No. 4 & 5 is hereby set-aside.

Date – 16/07/2025

(K. T. Adhayke)
Jt. Civil Judge Jr. Dn.,
Sillod.