



ORDER BELOW EXH.35 IN RCS No.45/2023
(Shashikant Vasantrao Deolankar Vs Vilas Vasantrao Deolankar)

1. This is an application filed by Defendant Nos. 2 to 7 under Order IX Rule 7 of the Code of Civil Procedure, 1908, praying that the ex-parte order dated 14.12.2023, passed against Defendant Nos. 2 to 7 in the above suit, be recalled and set aside, and that the said defendants be permitted to appear and contest the suit.

2. Defendant Nos. 2 to 7 submit that Defendant No. 1, who is their constituted attorney, could not attend the proceedings due to a serious medical emergency. His wife required a liver transplant, and in the absence of a deceased donor, Defendant No. 1 donated a portion of his liver and underwent major surgery on 10.04.2023 at Gleneagles Hospital, Mumbai. Owing to post-operative complications, weakness, and prolonged medical treatment, he remained under medical care in Mumbai for several months and was advised against travel. Due to these unavoidable circumstances, Defendant No. 1 was unable to appear before the Court or instruct counsel on behalf of Defendant Nos. 2 to 7, resulting in the ex-parte order dated 14.12.2023. The absence was neither intentional nor due to negligence. Medical records supporting the said facts have been produced on record.

3. It is further submitted that some defendants are aged and reside outside the village, while others were away for educational purposes, making communication difficult. Defendant Nos. 2 to 7 have substantial

rights and interests in the suit property, and refusal to set aside the ex-parte order would cause them irreparable loss, whereas no prejudice would be caused to the Plaintiff if an opportunity to contest the suit is granted. Hence, the ex-parte order dated 14.12.2023 may kindly be set aside.

4. The Plaintiff opposes the application on the ground that it is not maintainable and is liable to be dismissed with costs. It is contended that Defendant No. 1 has no authority to file the application on behalf of Defendant Nos. 2 to 7 without producing a valid power of attorney. The application has been filed after considerable delay and without filing a written statement.

5. It is further submitted that Defendant No. 1 had appeared through an advocate on 27.09.2023 after his surgery and was fully aware of the pendency of the suit. An order of "no say" had already been passed against him on 14.02.2023. Despite having knowledge of the proceedings, he failed to appear before the Court and allowed the matter to proceed, resulting in recording of the Plaintiff's evidence and passing of a "no cross-examination" order on 12.08.2025. The application does not furnish satisfactory or date-wise reasons for the delay from 2023 to 2025 and has been filed only to protract the proceedings and seek sympathy of the Court. Hence, the application deserves to be rejected with costs.

6. I have heard the learned counsel for the applicants/Defendant Nos. 2 to 7 and the learned counsel for the Plaintiff, and have perused the application, the reply filed by the Plaintiff.

7. It is well settled that the procedure prescribed by law is intended to be a handmaid of justice and not its mistress, and that the

courts ought to lean in favour of adjudication of disputes on merits rather than shutting out a party on technical grounds, particularly where valuable rights in immovable property are involved. At the same time, the explanation offered for non-appearance must be bona fide and the party seeking such relief cannot be permitted to take undue advantage of its own laches at the cost of the opposite side, who is also entitled to a expeditious trial.

8. In the present case, the applicants have placed on record material to show that Defendant No.1, who was acting as constituted attorney for Defendant Nos. 2 to 7, underwent a major and undeniably serious surgical procedure, namely live liver donation, for the benefit of his wife, on 10.04.2023, and remained under post-operative treatment for a substantial period thereafter. This is a circumstance beyond the control of the applicants and, in the considered view of this Court, constitutes sufficient cause within the meaning of Order IX Rule 7 of the Code of Civil Procedure for at least a part of the period during which the applicants remained unrepresented. At the same time, the objections raised by the Plaintiff cannot be brushed aside and go to the question of the terms on which relief, if any, ought to be granted, including costs.

9. Balancing the above considerations, and being satisfied that the ends of justice would be better served by affording Defendant Nos. 2 to 7 an opportunity to place their defence on record rather than by shutting them out on a technical ground, while simultaneously compensating the Plaintiff for the delay and inconvenience caused, this Court is inclined to allow the application, subject to costs and conditions as set out below.

ORDER

1 The application filed vide Exh.35 is hereby allowed.

- 2 Ex-parte order dated 14.12.2023 is hereby set aside subject to cost of Rs.1,500/- (Rupees One Thousands Five Hundred only)
- 3 The Defendant Nos.2 to 7 shall file their written statement after compliance.
- 4 As a condition for setting aside the ex-parte order, Defendant Nos. 2 to 7 shall pay to the Plaintiff costs of Rs.1,500/- (Rupees One Thousands Five Hundred only).

Date : 12.08.2026

(**Shaikh M. A. K**)
Civil Judge Junior Division, Khulatabad.