

**ORDER BELOW EXH.65 in Spl. C. S. No.04/2011**

1] The present application is filed by the defendant Nos.3 to 7 for setting aside Ex-parte orders passed against the defendant Nos.4 to 7 and No W. S. orders passed against the defendant No.3. It is contended by these applicants that the delay was not purposely. The rights and the interest of the present applicants are involved in this suit which pertains to the immovable property. So also some material documents were not received to the applicants so as to draft and submit the W. S. before the Court. Lastly they submitted that if the orders passed against them are not set aside by allowing their W. S. and if they are not allowed to take part in the proceeding, then they will suffer irreparable loss which cannot be compensated in terms of money.

On this application itself the plaintiffs filed their say and strongly opposed the application. It is their submission that the suit is of year 2011. The defendants deliberately and intentionally failed to appear and contest the suit by filing their W. S. within the given time. Only to prolong the decision of the suit and fruits of the decision, the application has been filed. The No W. S. orders against the defendant No.3 are passed prior to 5 years whereas the Ex-parte orders passed against the defendant Nos.4 to 6 are of more than 3 years old. So also the orders of Ex-parte against the defendant No.7 came to be passed on 03/05/2016. There is no supported documents to the reasons assigned in this application. The defendant No.8 is Advocate and doing the profession as Legal Advisor. All the other defendants are relative of defendant No.8. In spite of having knowledge of the legal procedure, the defendant No.8 failed to appear and contest the suit by himself and

for others also. The plaintiffs have filed his affidavit of chief-examination on 30/11/2016 and now the suit is for cross-examination on law point. Lastly they submit that deliberately and intentionally the application has been filed at such a belated stage and hence it be dismissed with heavy compensatory costs.

2] Heard both the Ld. Counsels at length and gone through the record and proceeding.

3] It is admitted fact that the suit is of year 2011 and it is for partition and separate possession of the plaintiffs. The roznama reveals that the orders of No W. S. came to be passed against the defendant Nos.1, 2 & 8 on 03/12/2012, the orders of Ex-parte came to be passed against the defendant No.4 on 01/08/2015, against the defendant No.5 on 28/01/2015, against the defendant No.6 on 06/08/2014 and against the defendant No.7 on 03/05/2016. The above details did suggest that the present application is filed at a belated stage i.e. up more than 3 to 5 years after passing of the respective orders. It is also the matter of record that the plaintiffs have amended the plaint for not less than three times and lastly he filed his affidavit of chief-examination on 30/11/2016 vide Exh.63. Now the suit is for the further evidence by the plaintiff.

4] On perusal of the application it is found that the reasons assigned in this application are not justifiable at all. It is also fact that there is no evidence to show that the defendant No.3 remains seeking continuously and continuous medical treatment required to her which prevent her from appearing the Court.

5] However, it is to be noted that the present suit is for the partition and possession of the joint family properties. The rights and interest of the present applicants are also involved in this suit. Therefore, they have right to take part and contest the suit on merit. So also to

settle the dispute between the parties and to decide the rights of the respective parties, the appearance of the present applicants is must.

6] However, considering the progress of the suit as discussed above and that the present application is filed at a belated stage i.e. from 3 to 5 years, they heavy costs is must so as to meet the ends of justice.

In result, the following order.

**:: ORDER ::**

The application is allowed subject to costs of Rs.5000/- to be paid to the plaintiffs within 14 days from this order, failing which the application be treated as dismissed.

Sd/-

Majalgaon  
Dt.15-04-2017

[S. R. Fakir]  
Civil Judge Senior Division,  
Majalgaon.