

MHBU13000018-2016



**Order below Exh. 33 in RCS No. 4/2016.**  
**Shaikh Ismail Sk. Tukdu vs. Shaikh Lal & others.**

Present application has been filed by defendant Nos.2, 3 and 5 thereby praying for setting aside **ex-parte order** dated 3/5/2016 passed against them.

2) Perused application, say of plaintiff. Also heard learned Advocates appearing for the respective parties.

3) Learned Advocate for defendant Nos.2, 3 and 5 has submitted that plaintiff has filed instant suit for fixation of boundaries and recovery of possession of encroached land against defendants. The suit summonses were served upon the defendants but they could not remain present in the court as they had gone out of village for doing labour work. Therefore, the present suit came to be proceeded ex-parte against them vide order dated 3/5/2016. However, when they received court motion notice from this court, they immediately appeared and filed present application.

4) It is further submitted that if this application is not allowed, then it will cause grave injustice to the defendants. In view of this fact, it is necessary in the interest of justice to give one more opportunity to the defendants to appear in the matter and to file their written statement by setting aside ex-parte order dated

3/5/2016. Hence, learned Advocate for defendant Nos. 2, 3 and 5 has prayed for grant of this application.

5) On the contrary, learned Advocate for plaintiff has strongly opposed this application on the ground that application in hand is nothing but on abuse of process of law. It is further submitted that in fact, defendant Nos. 2 to 7 were duly served and in spite of service of summons they failed to appear before court. Therefore, this court was pleased to passed ex-parte order against them on 3/5/2016. The present defendants failed to explain the delay and reason for their absent. Moreover, application in hand is without written statement and therefore can not be taken into consideration and it is not tenable. Hence, learned Advocate for plaintiff has prayed for rejection of this application.

6) I have perused record of the matter and also considered the submissions of learned Advocates appearing for both parties. It is pertinent to note here that on perusal of record minutely, it appears that present suit came to be transferred from court of the Jt. Civil Judge, Jr. Dn., Chikhli to this court on 2/3/2020. On 6/3/2021, court motion notices came to be issued against defendants. As such, defendant Nos. 2, 3 and 5 have appeared in the matter upon receipt of said court motion notices and filed present application.

7) It is further pertinent to note here that though the reason given by defendants in the present application is not

satisfactory but considering nature of suit, it will be just and proper to decide the present suit on merits by giving one more opportunity to these defendants. At the same time, it is also necessary to impose some realistic cost upon the defendants to compensate the plaintiff while allowing present application. Thus, I think it just and proper to allow present application. Hence following order is passed.

**ORDER**

- 1 Application is allowed subject to cost of Rs. 3000/- (Rs. Three thousands only) to be paid by defendant Nos. 2, 3 and 5 to plaintiff.

Date :- 02/03/2022.

(S.W.Thombre)  
Civil Judge Jr. Dn. Chikhli.

Certificate

I affirm B.B.Theng, Stenographer (L.G.) that the contents of this PDF file Judgment/ Order are same words, as per original Judgment/Order.