

ORDER below Exh.42
(Passed on 16th November.,2013)

Shriram Vs.
Jude Kashmir

01. This is an application filed by defendant No.1 for setting aside no WS order dated 29/8/2011 passed against him.

02. To this application, say of the other side was called. Other side side scribed its say on the back side of the application itself and resisted the application.

03. Heard both the learned Advocates for the respective parties at length.

04. The defendant No.1 submitted that he could not able to file his written statement on time because he was out of the country at Canada and was also suffering from illness. For these reasons he could not able to pursue the present matter and can file his written statement in time. Lastly, he prayed for setting aside of no WS order and prayed for permission to accept his written statement.

On the other hand ; the plaintiff strongly resisted the application thereby submitting that the suit summons and notices came to be served on 5/4/2011, he caused appearance on 7/4/2011 and thereafter, again chances for filing written statement. But, he failed to file the same this Court lastly, passed a no WS order on 29/8/2011. thereafter, the proceeded further ex parte. The plaintiff has filed his evidence affidavit at Exh.24. Now at this belated stage of the proceeding the defendant has filed the present application only with an intention to prolong the matter and to harass the plaintiff.

Plaintiff lastly prayed for rejection of application.

05. The defendant No.1 though stated that he was out of the country and was residing at Canada and was also suffering from illness but, to that effect no documents are filed. The reason stated by the defendant does not appears to be proper and appropriate one. But, in the larger interest of justice, the application of the defendant should be allowed in order to afford him a chance for contesting the matter on merits. This will enable this court to decide the dispute between the parties effectively and efficiently moreover, it will also save the multiplicity of litigation.

06. In view of this, the application of defendant No.1 deserves to be allowed but, at this same time, the plaintiff is also required to be compensated in terms of costs as there is considerable delay in making the application by defendant no.1. Hence, the following order is passed.

ORDER

01. Application is allowed subject to costs of Rs.2000/- to plaintiff.

Dated 16/11/2013

Sd/- (M.M.Rao)
Civil Judge, Jr.Dn.Chikhli