



ORDER BELOW EXH. 10

(Passed on 30th day of January, 2025)

This is an application filed by non-applicant No.1 to set-aside the order dated 25.07.2024 passed below Exh.1 to proceed against him ex-parte. The applicant filed say vide Exh.11, in which she strongly opposed the application and prayed for rejecting the application.

2] It is contention of non-applicant that due to his illness he failed to appear before the Court on fixed date. Thereafter, he met his advocate and prepared reply to the application filed by the applicant. He orally submitted that he is having good case and in the interest of justice, the opportunity be given to him to contest the case. Hence, he prayed to set-aside the order passed below Exh. 1 and grant permission to file his reply. On the other hand, applicant in reply submitted that the non-applicant deliberately failed to appear before the Court.

3] On perusal of the application and reply as well as record, it shows that non-applicant No.1 was dully served on 21.11.2023, but failed to appear on the fixed date, and as such, the Court proceeded against him ex-parte. By filing this application the non-applicant prayed to set aside the said order and allow him to file reply on record of the case. The reason mentioned in the application is not a valid ground to set aside the order passed below Exh.1. Apart from that the non-applicant has not filed any document on record of the case, whether he was suffering from illness or not. Except this, the matter is between the husband and wife, the non-applicant is ready to file w.s./reply. In order to decide the case on merit the pleading of non-applicant No.1 is necessary on record of the case. Moreover, if the application is allowed

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then case/proceeding will be decided on merit, on the other hand if the application is rejected then definitely prejudice will be caused to the non-applicant No.1 which cannot be compensated in terms of money. As the non-applicant No.1 failed to file written statement/reply within time, in order to check so called delay caused to him for filing reply/w.s., it can be compensated by imposing certain reasonable costs on him. Hence, I pass following order;

ORDER

Application filed at Exh.11 is allowed and non-applicant No.1 is permitted to file reply/w.s. on record of the case subject to payment of costs of Rs. 1,000/- payable to the applicant.

Date : 30.01.2025.
Desaiganj.

(Satish G. Gore)
Judicial Magistrate First Class,
Desaiganj.