

CNR NO. MHGA090009502021



IN THE COURT OF JOINT CIVIL JUDGE (JUNIOR DIVISION), CHAMORSHI
(Presided Over by Diksha D. Vighne)

Regular Civil Suit No. 36/2021

Sau. Kavita Sudhakar Yelkuchiwar ----- **Plaintiff**

-Versus-

Smt. Anusaya Bapu Dandkewar +3 ----- **Defendants**

Appearance:-

Advocate for Plaintiff :- Smt. M. K. Atmande

Advocate for Defendants :- Shri. D. G. Undirwade

Order Below Exh No. 21

(Passed on 14/12/2022)

This is an application for setting aside exparte order passed against defendant no. 1, 3 and 4 at below Exh. no. 01 on 14-03-2022 and grant of permission to file their written statement on record.

2. Defendant no. 1, 3 and 4 have submitted that after service of summons they had to appear before court and filed their written statement. But at that time defendant no. 1, 3 and 4 went to other city for important work and defendant no. 2 was ill. Therefore, defendant no.1, 3 and 4 could not appear before court and filed their written statement. It is further stated that absence of defendant no.1, 3 and 4 was not deliberate. If the exparte order has not set aside and permission to file written statement has not granted then it will cause irreparable loss to the defendant no. 1, 3 and 4. On contrary, if permission is granted then there is no any loss to the plaintiff. Hence, in the interest of justice they have prayed for setting aside exparte order and permission to file their written statement.

3. Learned advocate for defendants has submitted that defendant no. 1, 3 and 4 had no knowledge about this case. Defendant no. 2 is a responsible person of their family. Therefore, he was appeared before court on 18-12-2021. Thereafter, he was admitted in De-addiction Center Chandrapur. Thus, he was unable to inform to the defendant no.1, 3 and 4 about appearing before the court. Thus, due to their absence exparte order was passed against them. But their absence was not deliberate. Hence, he has prayed for setting aside exparte order passed against them and permission to file their written statement.

4. On the other hand, learned advocate for plaintiff has filed her say at the backleaf of the application and opposed this application. She has stated that defendant no.1 ,3 and 4 were deliberately did not present before this court and prolonging the matter unnecessarily to harass the plaintiff. The reason stated for delay is not considerable and sufficient to grant this application. As well as, no document has been attach by the defendants for their absence. Hence, it seems that this application is false and time taking. Hence, she has prayed for rejection of application or alternatively allow it with heavy cost.

5. Perused application and say thereon. Heard learned advocate for plaintiff. Learned advocate for defendant has failed to do complete hearing on this application. Therefore, the contents of this application alongwith part hearing are taken into consideration while deciding this application. On perusal of record it is seen that summons were served on defendant no. 1 and 3 on 01-12-2021 and on defendant no.4 on 07-12-2021. Despite service of summons defendant no.1, 3 and 4 did not appear before the court. Thus, exparte order was passed against defendant no.1, 3 and 4 on 14-03-2022. Thereafter, the suit was proceeded exparte against defendant no.1 ,3 and 4. The case was fixed for evidence of plaintiff. The plaintiff had filed her affidavit in lieu examination-in-chief on 15-10-2022

and on the same date defendant has filed this application for setting aside exparte order passed against them alongwith their written statement.

6. On perusal of plaint it is seen that the suit is filed for partition and separate possession of suit property. In cases of partition both plaintiff and defendants are at the same footings. But in support of the reason for absence stated in the application no documentary prove has filed. The order of exparte was passed on 14-03-2022 and this application is filed on 15-10-2022. Apparently there is delay of seven months. It is not specifically mention in the application that whether defendant no.1, 3 and 4 were went to other city during this whole seven months. As well as, they have not mention the name of place where they had went for their important work. Moreover, no medical certificate has filed in support of the contention that defendant no.2 was ill and taking treatment at De-addiction Center Chandrapur during that seven months. But if the permission to file written statement is given to defendant no.1, 3 and 4 then the case will be decided on merits by adjudicating all question of dispute. As well as, the Apex Court in their series of judgments has stated that liberal approach should be taken while giving opportunity of being heard to the opposite party. Considering aforesaid reason I find that even though the reason stated in the application is not sufficient but in the interest of justice the application should be allow with cost for setting aside exparte order and grant of permission to file their written statement. Thus, in the result I pass following order.

ORDER

1. Application is allowed subject to cost of Rs. 500/- payable to plaintiff.
2. The order of exparte passed against defendant no.1 ,3 and 4 on 14-03-2022 is set aside.

3. Permission is granted to defendant no.1, 3 and 4 to file their written statement on record.
4. Cost is a condition precedent.

Date: 14.12.2022

(Diksha D. Vighne)
Jt. Civil Judge (Jr.Dn.),
Chamorshi.