

R.C.S. NO. 13/2022

Shaikh Mainoddin Vs. Sajedali khan

ORDER BELOW EXH.NO. 21

(Passed on 28-07-2022)

1] By this application, the defendant No. 02 is praying for setting aside ex parte order passed against him.

2] Read application and say. Heard both sides. Perused the record.

3] It is contended by defendant No. 02 that his mother was ill and none was there for looking after aliment of his mother. Therefore, due to said situation, he could not appear before the Court and he failed to engage the counsel. He did not have deliberate negligence for non appearance in the Court. Now he filed written statement on record along with this application and ready for taking part in the proceeding. Hence, he filed present application for setting aside ex parte order passed against him on 18.06.2022 below Exh. 01.

4] Vide reply Exh. 24, the plaintiff strongly opposed application on the ground that ample opportunities had been given to the defendant. But the defendant deliberately caused delay in appearing in the matter. Moreover, the supporting documents are not in concerned with the cause mentioned in the application. The documents are obtained later on. Hence, he prayed to reject the application.

05] I have gone through the record, it is shows that the defendant No. 02 served by suit summons on 26.02.2022. Then after, the date was fixed for appearance 28.02.2022. But on the said date, defendant No. 02 did not appear. Therefore, on 18.06.2022 order of

proceeding the suit ex parte against the defendant No. 02 is passed.

06] In all, there appears delay of near about 05 months in appearing by the defendant No. 02 in the suit. The defendant No. 02 filed some medical document pertaining to ailment of his mother. It shows that the mother of defendant No. 02 might have suffering from some ailment and it can be considered as sufficient cause. But, due to delay caused on the part of defendant, application of temporary injunction remained to be decided. However, it is well settled principle of law in Latin Maxim "audi alteram partem" i.e. no one can condemned unheard or listen to the other side or let the other side be heard as well. Therefore, taking into consideration, the principle laid down in above Latin Maxim opportunity of hearing is appears to be require to given by compensating delay in terms of money. Hence, in my considered view, delay can be penalized by imposing costs of Rs. 1000/- against the defendant No. 02 and application is required to be allowed. Hence, I pass the following order.

ORDER

- 1] The application (Exh.21) is hereby allowed subject to costs of **Rs.1000/-** (One Thousand only).
- 2] Payment of costs is condition precedent.
- 3] After payment of costs, accompanied written statement cum reply be taken on record and it be mark as exhibit number.

(Order is dictated and pronounced in open Court.)

Place : Partur
Dated : 28-07-2022

(Liladhar D. Korde)
Civil Judge (Junior Division)
Partur.

- : C E R T I F I C A T E : -

I affirm that the contents of this Pdf file order are same word as per original order.

Name of Stenographer :- R.B. Dukare

Court Name :- Liladhar D. Korde, C.J.J.D., Partur

Date of decision :- 28.07.2022

Order signed by P.O. on :- 28.07.2022

Order uploaded on :- 28.07.2022