

R. C. S. No. 113/2012
Mangalbai Vs. Tukaram & Ors.
CNR No.MHJN09-000361-2012.

ORDER BELOW EXH. 49

Present application is filed by defendant no. 7 for setting aside no W. S. order passed against him below Exh.1. He submitted that due to non availability of documents, he could file his written statement within time. He has not deliberately caused delay in filing it. Hence, he has prayed to allow the application.

2] The application is opposed by plaintiffs. They submitted that defendant no. 7 has appeared in the matter on 15/12/2017. In spite of availing sufficient time, he has not filed his written statement. The reason mentioned in the application is not justifiable. He has intentionally tried to prolong the matter. Hence, on these grounds, they have prayed to reject the application with costs.

3] Heard Ld. Advocates for respective parties. Perused record. Present suit is filed for partition and separate possession, declaration and perpetual injunction. Record reveals that, defendant no. 7 is added as party to the suit as per order below Exh. 31. Thereafter, he appeared on 15/12/2017. In spite of availing sufficient time, he failed to file his written statement. Hence, no. W. S. order came to be passed against him on 22/3/2018.

4] Defendant no. 7 appears to be subsequent purchaser of the suit property. Hence, his valuable rights appear to have been involved in the suit. Therefore, though, he has not filed his written statement

within time, I find that an opportunity deserves to be granted to him to put his defence before the Court. It will not cause any prejudice to the other. Rather, it will help the Court to decide the controversy completely and effectively. At the same time it cannot be forgotten that trial has prolonged due to defendant no. 7 . Hence, costs deserves to be imposed on him. Thus, considering the facts and circumstances and the nature of the suit, present application deserves to be allowed. Hence, for these reasons, following order is passed :

ORDER

- 1) Application (Exh. 49) is allowed subject to payment of costs of Rs. 700/- (Rupees Seven Hundred only) to be deposited in Court on or before next date.
- 2) After depositing the costs, plaintiffs shall be entitled to withdraw it.
- 3) No W. S. order passed below Exh. 1 dated 22/3/2018 is set aside in the above terms.

Date : 14/08/2018.

Sd/-
(S. D. Kamalakar)
Joint Civil Judge (J.D.)
Badnapur.