

MHKO050033542022**ORDER BELOW EXH. 20 IN REG. CIVIL SUIT NO. 341/2022**

1. The defendant no. 1 has filed present application to set aside no WS order passed against him. The plaintiff has filed say at Exh. 22. Heard plaintiff. The defendant and advocate are absent. Perused the record.
2. The defendant no. 1 submitted that suit dispute is related to immovable property. Plaintiff has claiming illegal right by filing this suit. Defendant want to have fair trial by filing WS. Defendant is old aged person. He cannot walk without any other help. He cannot attend the court dates because of his illness. Defendant want to file counter claim against plaintiff in this suit. If application is rejected defendant will suffer irreparable loss. Hence, prayed to set aside no WS order. The advocate for the plaintiff objected the application stating that another suit is pending against present defendant at 4th Jt. CJJD, Ichalkaranji RCS No. 366/2022. In that suit defendant has filed same type of application against No WS order. As per that order defendant has paid costs in that suit. Suit is pending for cross-examination of plaintiff witness no. 1. Defendant has sold suit property after the injunction is granted by the court. Defendant has no right, title and interest in the suit property. If application is allowed plaintiff will suffer irreparable loss. He has filed false application and reasons mentioned in the application are not acceptable. Hence, prayed to reject the application.

3. Perused the record. It is to be noted that order at Exh. 01 which is 'Defendant no. 1 and 2 has failed to file WS within 90 days. Hence, suit shall proceed without WS against defendant no. 1 and 2' in the present suit. However, statutory period for filing written statement is over when defendant no. 1 has filed this application. Defendant no. 1 was served vide Exh. 8 on 18.08.2022. Thereafter, he has appeared through advocate on 22.08.2022 vide Exh. 10. The present application is filed on 24.08.2023. Thus, the maximum statutory period made available under Order VIII Rule 1 of CPC i.e. of 90 days is over on 21.11.2022. Certainly written statement is filed beyond the limitation period.

4. The present suit is filed for Specific Relief Act. The suit is yet at preliminary stage. Considering the fact that the defendant no. 1 was collected important documents and information are acceptable. Thus, to decide the dispute between parties on merit and considering the principle of natural justice it is justifiable to give opportunity to the defendant no. 1. However, considering the delay to filing the written statement exemplary costs needs to be imposed. Hence, the following order.

ORDER

1. Application Exh. 20 is allowed subject to costs of Rs. 500/- (Rs Five Hundred only) payable to plaintiff on or before next date.
2. Written statement will be taken on record after the payment of the costs.
3. Parties to take note.

Sd/-

Ichalkaranji
Date : 01.02.2024

(S. S. Pednekar)
6th Jt. Civil Judge Junior Division,
Ichalkaranji