

**Order passed below Exh.37 in R.C.S. No.273 of 2012.**

**Savita vs. Vaishali**

Present application is filed by defendant Nos.1 to 3 praying therein to set-aside *ex-parte* order passed against them.

Facts of the application are short are as under:-

**02.** Plaintiff has filed the suit for specific performance of agreement dated 16/09/2006. Record shows that summons was served on defendant Nos.1 and 2 by RPAD, but they did not appear and hence, by order dated 24/06/2013 suit proceeded *ex-parte* against them. While by order dated 29/10/2012 suit proceeded *ex-parte* against defendant Nos.3 to 5. It is contended by applicants/ defendant Nos.1 to 3 that defendant No.1 is widow and all the defendants are residing at Mumbai. Due to death of their family member defendants were in a possession to look after said matter and therefore, they could not appear and contest the suit. It is further stated by applicants that no any loss or prejudice will cause to plaintiff, if permission is granted to the defendants to file written statement on record. Hence, this application.

**03.** On the other hand, learned advocate for plaintiff filed say at Exh.38 and oppose to allow this application. It is stated by plaintiff that defendants have appeared after 4 years from passing order against them and delay of 4 years is not properly explained by them. He further stated that, reason stated by defendants are not at all tenable in the eyes of law

to set-aside order passed against them. It is further stated by on behalf of plaintiff that presently defendant Nos.1 to 3 have appeared in the suit. Therefore, their power of attorney namely Rahul Sudam Pawar, he has no any right to act as power of attorney for the defendants with these submissions he prayed for rejection of application.

04. Heard learned advocate for both the parties and gone through record. It appears that suit is still pending for hearing on application at Exh.5, which is filed by plaintiff seeking interim relief against the defendants. Thus, in the present suit yet plaintiff has not adduced his evidence and therefore, no any loss or prejudice will cause to plaintiff, if present application is allowed. On the contrary, it will be helpful to decide the suit on merit. It is true, there is a delay of 3 to 4 years in filing the said application. However, during the said period defendants were reside at Mumbai and due to some other reasons mentioned in application, they could not appear and contest the suit. It is true that, due to casual approach of defendants delay is caused in disposing the said matter. However, on that ground alone application can not be rejected. So far as delay and casual approach on the part of defendant Nos.1 to 3 are concerned same can be balanced by imposing lost on him. In result, I pass following order.

**ORDER**

- 1) Application at Exh.37 is hereby allowed. Subject to cost of ₹5,000/- payable by defendants jointly to the plaintiff.

- 2) Defendant shall pay cost amount within period of 14 days from today, in case of failure pay cost in stipulated time said order canceled automatically and suit shall proceed further without written statement of defendants.
- 3) W.S. shall be taken on record after payment of cost amount by the defendant.

Sd/-

(K.G.Sawant)

Date:01/09/2017.

Jt.Civil Judge, Jr.Dn., Jaysingpur.

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Shri.R.L.Mane.
Name of Court	Jt.C.J.J.D.& J.M.F.C., Jaysingpur.
Date of Dictation.	01/09/2017.
Judgment/order signed by the PO on	01/09/2017.
Judgment/order uploaded on	07/09/2017.