


MHKO110009702019 	<p style="text-align: center;"><u>ORDER BELOW EXH. 41</u> <u>IN RCS No. 98/2019</u> <u>Shalini Dattatray Sankpal</u> <u>Vs.</u> <u>Shantabai Tanaji Suryawanshi</u></p>
---	--

The present application is made by the defendant No. 11 for setting aside the ex-parte order passed against her and for taking her written statement on record. The plaintiff has filed her say on the application itself and strongly objected to it.

02. Perused the record. Heard the advocates for both the sides.

03. The Ld. Advocate for the defendant No. 11 submitted that, as the defendant is suffering from high blood pressure, joint pain and diabetes, she was unable to appoint an advocate to represent her in the present suit. As she was unwell, she was unable to provide the necessary information and documents in present suit and hence, she could not appear in the present suit on service of summons therefore, she prayed to allow the application.

04. The Ld. Advocate for the plaintiff strongly objected the said application and prayed to reject the same.

05. On perusal of record it appears that, the suit summons served by R.P.A.D. on defendant No. 11 was refused on 01/10/2019 and since then she failed to appear in the present suit. The defendant No. 11 has appeared in the present suit today itself.

06. On perusal it prima facie appears that, the defendant No. 11 is also a contesting party to the suit and on perusal of entire record, it appears that, no ex-parte order is passed against the defendant No. 11. Therefore, the question of setting aside the ex-parte order is does not arise. The present suit is filed for partition, declaration and injunction and therefore, a fair opportunity of hearing needs to be given to her in order to decide the suit on merits. Issues have been framed at Exh. 37 and that the plaintiff has filed her evidence affidavit at Exh. 39. As the hearing of the matter has yet not begun, no loss or prejudice will be caused to the plaintiff if the present application is allowed. In spite of having knowledge of the said suit, the defendant No. 11 has appeared in the present suit after a period of approximately 5 years and 4 Months, the said casual attitude on the part of the defendant cannot be overlooked. The plaintiffs needs to be compensated by imposing cost on defendant No. 11. Hence, in the interest of justice, the following order is passed:-

ORDER

1. Application at Exh. 41 is partly allowed.
2. The written statement and say filed by the defendant be read & recorded on payment of cost of Rs. 1000/- (Rupees One Thousand only) to the plaintiff on or before next date.

Peth-Vadgaon.

Date : 03.03.2025.

Sd/-
(R. S. More)

3rd Jt. Civil Judge, Jr. Dn, Peth-Vadgaon.