



Order Below Exh. 40 In RCS No. 151/2019

CNR No. :- MHKO110014022019

Passed On 23/02/2023

The present application has been filed by the defendant No. 10 for setting aside Ex-parte order passed against him below **Exh.1** dated 13/01/2022 and to permit him to file written statement and say.

2. It is the contention in the application that, the present suit is for partition and permanent injunction. The defendant No. 10 do not reside within the jurisdiction of the court and suit property are also not within the jurisdiction of the court. Hence, he failed to appear and file his written statement and say. Accordingly, Ex-parte order was passed against him. Now defendant No. 10 is appeared and willing to file WS and contest the suit. However, no loss a prejudice will caused to the other side, if the application is allowed. Hence, for the purposed of fair trail and for ends of justice. Lastly he prayed for allowing the present the application.

4. Accordingly, the say of learned advocate for plaintiff is called for. Plaintiff contended that, contents in this application are not true and correct and strongly objected. The reason mentioned in this application is not believable. Hence, application is rejected. If application is allowed then heavy cost should be imposed against defendant No. 10.

5. Heard both sides. As the application is filed on 28/07/2022. Perused the record and proceeding. In spite of ample opportunities he has failed to proceed the matter. Reasons mentioned in the application is vague to some extend. However, considering the matter, I am opinion that, for deciding the matter merits and for fair trail, it is necessary to allowed the defendant No. 10 to contest the matter. No injustice will be

caused on the part of plaintiff, if I allowed this application. The civil rights of the parties are entailed in the instant suit. This recourse would facilitate the court to adjudicate the case on merit and avoid multiplicity of the further litigation. But on the other hand the negligence on the part of defendant No. 10 should not be overlooked. The negligence of defendant No. 10 can be cured by imposing cost on him. Therefore following order would meets the end of justice.

ORDER

1. Ex-pare order pass against the defendant No. 10 at **Exh.-1** on 13/01/2022 is set aside and permission is granted to file written statement and say subject to cost of ₹500/- (In words Five Hundred Rupees Only) to be paid to plaintiff.
2. After depositing the cost written statement and say will be considered.
3. The parties shall take the note of this order and comply accordingly, on or before next date.

Date : 23/02/2023
Peth-Vadgaon.

(S. D. Sonawane)
Jt. Civil Judge Junior Division,
Peth-Vadgaon.