

MHKO110014292023 	<u>ORDER BELOW EXH. 41</u> <u>IN RCS No. 185/2023</u> <u>Bhagwan Ganpati Mane</u> <u>Vs.</u> <u>Shanta Dyandev Salkar and Ors.</u>
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The present application is filed by the defendant No. 2 for setting aside the ex-parte order passed against him and for taking his say, written statement on record. The plaintiff has filed his say below Exh. 42 and strongly objected to it.

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

03. The Ld. Advocate for the defendant No. 2 submitted that, as there was discussion for settlement between the plaintiff and defendant, he did not considered it necessary to appear in the present suit on service of summons. As a result, ex-parte order has been passed against him. If his say and written statement is not taken on record, it will result in irreparable loss to the defendants. Hence, he prayed to allow the application.

04. The Ld. Advocate for the plaintiff strongly objected the said application. He submitted that, the reason mentioned in the application is not proper. The defendant no.2 has deliberately caused delay for appear in the suit and filing say and written statement. Hence, he prayed to reject the application.

05. On perusal of record it appears that, the plaintiff has filed the present suit for declaration and perpetual injunction

against the defendants. As per the bailiff report, the suit summons were served upon the defendant no. 2 on 10/02/2025. Since then he failed to appear in the present suit. Therefore, ex-parte order has been passed against him on 08/05/2025. On 09/03/2026 the defendant no. 2 appeared in the present suit and filed said application. However, there is delay of approximately 10 months, 2 days for filing the application.

06. Moreover, the reason given for the delay caused is not appropriate and considerable. The reason given that there were chances of compromise, the plaintiff would withdraw the matter upon compromise. Therefore, he did not appear in the present suit is not a lawful excuse for not appearing in the present suit. However, the matter needs to be adjudicated on merits. A fair opportunity of hearing needs to be given to the defendant. 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.

07. However, the casual attitude of the defendant no. 2 towards the system of dispensing justice cannot be overlooked at this stage. Therefore, cost needs to be imposed upon the defendant no. 2. Hence, in the interest of justice, the following order is passed:-

ORDER

1.	Application at Exh. 41 is allowed.
2.	The ex-parte order dated 08/05/2025 against defendant no. 2 is set aside on payment of cost of

	Rs. 300/- (Rupees Three Hundred only) to the plaintiff on or before next date.
3.	Also, the written statement and say filed by the defendant no. 2 be read & record on payment of cost of Rs. 300/- (Rupees Three Hundred only) to the plaintiff on or before next date.

Peth-Vadgaon.

Date : 02.07.2026

sd/-
(R. S. More)

4th Jt. Civil Judge, Jr. Dn, Peth-Vadgaon.