

ORDER BELOW EXH- 57.

Defendant no.1 has filed this application for setting a side no W. S. order passed against him. It is contention of defendant that, after service of suit summons, he has been appeared in proceeding and given undertaking for construction of his house. Now, he has constructed his house. Meanwhile, he has been ill and therefore could not able to attend the court proceedings. Further, he is uneducated and having no knowledge of legal provision. In result no W. S. order was passed again him. He is not intentionally prolong the matter. He along with this application filed copy of his W. S. on record. If his application allowed, no prejudice would be caused to the plaintiff. However, if it rejected, he will suffer irreparable loss.

2. Counsel for plaintiffs has endorsed his say corner side of the application and submitted that, defendants have filed this application after plaintiffs adduced their evidence. More than sufficient time laps. Therefore, prayed to imposed heavy cost.

3. I have heard counsels for both sides at considerable length. Counsel for defendant contended that, defendant already appeared in proceeding. However, due to his illness and illiteracy could not able to file his W. S. within time. He is not intentionally prolong the matter. Per contra, counsel for plaintiff submitted that, as per record, plaintiffs closed their side of evidence and this application came on record. He prayed to impose heavy cost.

4. As per record, defendant no.1 has appeared in proceeding on 22.02.2022. However, inadvertently Ld. Predecessor passed ex-parte order against him on 08.09.2022. Further, as per record, no W. S. order was not passed against this defendant. But, considering the application filed by defendant, he know very well that, he has filed his W. S. after much long time.

5. Admittedly, defendant not pleaded exact delay caused by him to file this application. Further, plaintiffs closed their evidence and now suit is posted for defendant's evidence. Considering W. S. of other defendants, issues were framed on 19.11.2022. Though, defendant not pleaded exact delay, but it appeared its record that, more than 3 years delay caused by defendant to file his W. S.

6. This is suit for partition and possession. Plaintiff no.1 & 2 are sisters of defendants. Due to the above act of present defendant, suit is unnecessarily prolong and plaintiffs get away from their rights. The conduct of defendant itself shows that, he is not diligent to avail his right.

7. Considering nature of proceeding W. S. of defendant ought to be on record. Further, in absence of W. S. of defendant, it amounts denial of fair trial to him. But, at the same time the delay caused by defendant need to be compensated by him. Therefore, some cost deserved to be imposed over him. If application allowed, no prejudice or hardship caused to plaintiff. Further, if it rejected, defendant will suffer. Thus, in result of above discussion, I pass following order,

ORDER

1. Application stands allowed subject to the cost of Rs. 1,000/- paid to the plaintiffs.

2. After payment of the cost amount, the W. S. filed by defendant be read and recorded.
3. Defendant to take note and comply order accordingly.

Place- Ajara.
Date- 05.04.2025.

(R. P. Thore)
J. O. Code – MH 02897
Civil Judge, Junior Division,
Ajara.

