



Reg. Civil Suit No. 321 / 2020
Naginbai Vs. Sakhubai & ors.

ORDER BELOW EXH. 46

(Passed on 21.09.2024)

1. This is an application filed by defendant No.3 Janabai Ram Biradar and thereby sought for setting aside *ex parte* order and taking written statement on record.
2. By way of this application the case put forth by the applicant in brief is that she has been served with suit summons. However, as she could not get some important within time, she could not have appeared in the Court within prescribed period. Meantime, the impugned order came to be passed against her. She has stated that her non appearance is not deliberate and intentional one. Valuable rights have been involved in the matter. If an opportunity of being participated in the matter is denied, she will suffer such a loss which cannot be compensated in terms of money. Ultimately she has prayed to allow the application.
3. The plaintiff vide his say overleaf the application itself contested the application. He has stated that the reason put forth by defendant No.3 is not proper and genuine. Hence, prayed for rejection of the application.
4. I have heard learned advocates for both parties at considerable length. Perused the record. Perusal of the record reveals that this defendant was duly served with suit summons on 02.09.2020. The instant application is moved on 20.08.2024 whereas the impugned order came to be passed on 02.11.2023. Thus, it is clear that despite sufficient opportunity this defendant failed to enter her appearance prior in time.
5. Now, I proceed to examine the reason put forth by this defendant for previous non appearance. According to her, due to some unavoidable circumstances and due to lapse of time to collect some important documents, which are required for filing written statement, she could not enter her

appearance within stipulated period. The said reason is supported by an affidavit. It is observed that no party could put forth his defence without referring to the documents concerned. Thus, the reason put forth by the defendant could be termed as good cause for her previous non-appearance. Further, I hold that for the purpose of deciding the matter on merits, it is essential to give an opportunity to the party for defending her case by setting aside *ex parte* order and permitting her to file written statement of her defence. So far as the procrastination at the instance of this defendant is concerned, it may be taken care of by imposing costs on the failure party. With these reasons, following order is passed :

ORDER

1. The application is allowed subject to costs of Rs.700/- (Seven Hundred rupees only), payable to the plaintiff on next date, without fail.
2. After payment of costs amount, the written statement of defendant No.3 shall form part of the record.
3. Parties to take note.

Date : 21.09.2024

(Bhalchandra R. Zende)
4th Jt. Civil Judge (J.D.),
Udgir.