

MHLA110002672020



**Order below application vide Exh.48 in RCS No.294/2020**

Perused contents of the application and say thereon. Heard to both sides. Perused the record. Learned advocates for the parties submitted contents of the application and say thereon.

2. The application discloses that, defendant No.4 was suffering from paralysis. She was ill since four to four and half years. Therefore, she remained unable to remain present and provide relevant information and documents to the advocate. Defendant No.4 did not intentionally avoided to appear. The suit is with respect to valuable properties. Rights of the defendant No.4 involved therein. Therefore, defendant No.4 prayed to set aside an ex-parte order passed against her and acceptance of her written statement. The plaintiff contended that reasons for delay are false. She was not suffering from any disease. The documents are not filed to show the illness. Therefore, the plaintiff prayed to reject the application with cost.

3. The perusal of record, it reveals that defendant No.1 was alleged to have been owner and possessor of the suit property. He agreed to sell the same to the plaintiff for consideration of Rs.3,80,000/-. Defendant Nos.2 and 3 are alleged to have been involved in the transaction of such agreement to sell of the suit property. Defendant No.1 refused to execute the sale deed of the suit property in favour of the plaintiff as agreed. Apart from this, defendant Nos.1 to 3 illegally sold the suit property to defendant No.4. The plaintiff claimed the relief of specific performance of

contract as agreed. Defendant No.1 in his written statement denied the facts with respect to the invalidity of the alleged sale transactions which is taken place with defendant No.4. Defendant No.1 further contended that he sold the suit property to defendant No.4 for consideration of Rs.2,85,000/-. He also denied alleged agreement to sale. The perusal of record, it prima facie reveals that the property with respect to which the plaintiff sought for relief of specific performance has been transferred to defendant No.4. The perusal of rival pleadings it appears that rights or interest of defendant No.4 is involved either in the present suit or in subject matter thereof. Therefore, opportunity of hearing will have to be given to defendant No.4. Affording such opportunity will also helpful to decide real controversy between the parties finally on merits and to avoid multiplicity of the suits and proceedings.

4. Apart from this, order proceeding the suit without written statement of defendant No.1 was passed on 13/07/2022. Such order proceeding the suit without written statement of defendant No.1 is set aside on 07/02/2025. On 13/07/2022, itself an ex-parte order against defendant No.4 has been passed. The suit has already been proceeded ex-parte against defendant Nos.2 and 3. Issues vide Exh.44 have been framed on 10/03/2025. The plaintiff filed her affidavit of examination-in-chief on 28/11/2022. She filed evidence affidavit of her witness No.2 on 05/02/2024. The suit is proceeded without cross examination of the plaintiffs' witnesses as record reveals. The perusal of record it reveals that order of no written statement and no cross examination were passed on different dates and were set aside on different dates. Accordingly, the suit is proceeded further.

5. Thereafter, defendant No.4 filed present application for

setting aside an ex-parte order passed against her on 24/07/2025, whereby the plaintiff filed her say on 11/08/2025. Undoubtedly, there is delay on part of defendant No.4. However, defendant No.4 filed her affidavit vide Exh.49, whereby she affirms that she was suffering from paralysis and was ill since last 4 to 4 ½ years due to which she remained unable to provide information and relevant documents to her advocate and remain present. Therefore, considering affidavit vide Exh.49 and aforesaid facts, record, proceeding and the rival pleadings, alleged delay may be compensated with the costs.

6. Furthermore, the plaintiff will have an opportunity to adduce further evidence and to cross examine the defence witnesses. Therefore, no prejudice would be caused to her if the said ex-parte order is set aside. Hence, in the interest of justice, I pass following order.

**ORDER**

An order dated 13/07/2022 proceeding the suit ex-parte against defendant No.4 is hereby set aside subject to cost of Rs.5,000/- to the plaintiff.

Date :11/08/2025

(R.V. Pande)  
Civil Judge (Sr.Dn.),  
Nilanga, Dist. Latur.