

MHLA11-000577-2019

Order below application vide Exh.50 for setting aside
Ex-parte orders in RCS No. 434/2019
Balaji Vs. Kundlik and Ors.

Perused contents of the application and say thereon. Heard to learned advocates for the parties. They submitted contents of application and say thereon. Perused the record.

2. The application discloses that, suit summons of defendant No.1/2 and 1/3 were received by son of defendant No.01 namely Phulchand. Defendant No.1/2 and 1/3 are illiterate, brother-in-law of defendant No.1/2 was ill. Defendant No.1/3 also ill. Therefore, they remained unable to remain present and file their written statement within time. Lastly, defendant No.1/2 and 1/3 prayed to set-aside an order dated 16.02.2022, proceeding the suit ex-aprte against them. The plaintiff contended that, the present application is not tenable. The suit summons was duly served to defendant No.1/2 and 1/3 on 12.07.2021. They were aware of filing of the present suit. Recording evidence of the parties in the present suit is concluded. The present application is filed to protract the matter. Reasons for delay is not proper. The present suit is partly heard. Sufficient opportunity is given to them. However, they failed to proceed further. Therefore, the plaintiff, lastly prayed to reject the application.

3. However, present application is supported with affidavit of defendant No.1/2 whereby she affirms contents of the application and as to illness of brother-in-law defendant No.1/2

and defendant No.1/3 and about their illiterateness. Furthermore, averment in the plaint prima-facie reveals that the defendants have no concerned with the suit property. However, they are obstructing to the plaintiff's possession. The plaintiff asked them for not doing so. However, the defendants refused for doing so. The plaintiff is claiming his lawful possession and ownership to the suit property. The plaintiff lastly prayed for declaration that he is owner of the suit property and perpetual injunction restraining the defendants from causing obstruction to the possession of the plaintiff over the suit property. The present defendant denied claim of the plaintiff in toto and lastly contended that to dismiss the suit. Apart from this, from the material available on record it prima-facie reveals that there is dispute with respect to description of the suit property also. The defendants denied validity of the plaintiff's ownership and possession. In such circumstances and considering aforesaid facts, opportunity of hearing will have to be given to defendant No.1/2 and 1/3. Affording such opportunity will also be helpful to decide real controversies between the parties finally on merits and to avoid the multiplicity of the suits and proceedings. Undoubtedly, the suit was fixed for final argument. Defendant No.1/2 and 1/3 filed the present application belated. Undoubtedly, there is delay on part of defendant No.1/2 and 1/3. However, considering aforesaid facts, reliefs sought for and nature of the proceedings, delay may be compensated with the costs. In such circumstances, if opportunity as aforesaid is given to defendant No.1/2 and 1/3, no prejudice will be caused to the plaintiff. Hence, in the interest of the justice, I pass the following order :-

ORDER

1. Applications vide **Exh.50** is allowed as prayed.
2. Order dated 16.02.2022, passed below Exh.01 proceeding the suit ex-parte is hereby set-aside to the extent of defendant No.1/2 and 1/3 subject to cost of Rs.2,000/- payable to the plaintiff as on toady or on next date or any other date which is extended by the Court.

Date :22/09/2025
Place: Nilanga

(R. V. Pande)
Civil Judge, Senior Division, Nilanga,
District Latur.