



Order below Exh.26 in Spl.CS No.13/2019
Prabhawati Vs.Ashok

By this application defendant No.2 has requested to set aside the ex-parte order dated 04/07/2022 passed against him and to accept his WS, on the grounds stated in the application. Plaintiff has filed her say and raised strong objections. Perused application and say. Heard both the sides. Record shows that plaintiff has filed this suit for specific performance of contract. Initially the suit came to be filed against defendant No.1 only. However, later on, by carrying out amendment vide order below **Exh.15** the name of defendant No.2 was arrayed as party to the suit. Accordingly, suit summons came to be issued and in spite of its service vide **Exh.23**, she failed to appear. In the result, ex-parte order came to be passed against her on 04/07/2022.

2. Record further shows that plaintiff has examined herself as PW No.1 by filing her affidavit of chief examination way back on 16/03/2021 at **Exh.20**. She has also examined Mastan T. Shaikh as PW.No.2 by filing his affidavit of chief examination at **Exh.25** on 22/11/2022. Defendant No.1 failed to conduct cross examination of both the witnesses and therefore, no cross order came to be passed against him. Be that as it may. Considering the nature of suit, reliefs claimed and grounds stated in the application, in my opinion, it is desirable that defendant No.2 be permitted to contest the claim of plaintiff on merits. However, while doing so, the delay of approximately near about 6 months caused by her cannot be neglected and for that purpose it is necessary to saddle costs upon her. Hence, I pass following order:-

ORDER

1. Ex-parte order dated 04/07/2022 passed against defendant No.2 is set aside subject to costs of Rs.500/- to be payable by defendant No.2 to plaintiff on or before next date.
2. After payment of costs amount and its acknowledgment by plaintiff, the WS filed by defendant No.2 be taken on record.

Order dictated and pronounced in open Court.

Date :15/12/2022

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.