

MHLA110009222018



Order below Exh.64 in RCS No.347/2016

By this application defendant No.1 has requested to set aside the No WS order dated 24/03/2017 passed against her on the grounds stated in the application. Plaintiffs have filed their say and raised strong objections. Perused application and say. Heard both the sides. Both of them have submitted in the line of their application and say respectively. Record shows that plaintiffs have filed this suit for perpetual injunction and mandatory injunction. Defendant No.1 had appeared through her counsel on 22/09/2016 vide **Exh.15**. She sought adjournment for filing WS/say on three dates and at last on 24/03/2017 No WS order came to be passed against her.

2. Record further shows that on 03/07/2018 defendant No.2 has filed its WS and accordingly, issues came to be framed at **Exh.46** on 16/01/2020. Plaintiffs moved an application at **Exh.52** for granting permission to carry out necessary amendment in the plaint, to which defendant No.1 had filed her say and the application came to be allowed by order dated 05/01/2023 subject to cost of Rs.500/- each to be payable by plaintiffs to both the defendants. Record further shows that defendant No.1 has accepted the cost amount of Rs.500/-. Record clearly shows that since beginning defendant No.1 was aware that the suit is proceeding without her WS but despite this she didn't move this application at the earliest possible opportunity. There is delay of approximately more than four years, after deducting period of two years of Covid pandemic, in moving this application. Be that as it may. This delay can be condoned by imposing cost upon defendant No.1. While determining the cost amount the fact that defendant No.1 is a lady has to be considered by this Court and in my opinion imposition of costs of

Rs.3,500/- will not cause any injustice upon her. However, permission to file WS and contest the claim of plaintiff on merits needs to be granted. It is only possible by setting aside No WS order passed against her. To grant an opportunity of fair trial and to follow the principles of natural justice, I pass following order:-

ORDER

1. No WS order dated 24/03/2017 passed against defendant No.1 is hereby set aside subject to cost of Rs.3,500/-(Rs. Three thousand five hundred only) to be payable by her to plaintiffs on or before next date.
2. After payment of cost amount and its acknowledgment by plaintiffs, the WS/say filed by defendant No.1 be taken on record.

Date :12/04/2024

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