

R.C.S. No. 60/2019
Dastgir v/s Bhanudas and ors.
CNR No.MHLA150002852019

ORDER BELOW EXH. 28
(Passed on 04/09/2019)

The present application is moved by the defendant no. 1 to 4 and 6 for setting aside no say order against them on application below exh 22. According to them, the application below exh. 22 is filed on dated 24.07.2019. They filed their W.S. on dated 19.08.2019, which was accepted after payment of cost on dated 29.08.2019. But they failed to filed say on application below exh. 22 so this court passed no say order on dated 19.08.2019. Plaintiff not taken any steps for securing presence of defendant no.5, inspite of this the court passed no say order on application below exh. 22. they are ready to file say on application below exh. 22. So they prayed for setting no say order dated 19.08.2019.

2. On the other hand learned advocate for plaintiff, resisted the application on the ground that defendant no. 1 to 4 and 6 appeared in suit on dated 20.04.2019. then on dated 29.04.2019, 12.06.2019, 05.07.2019, 24.07.2019, 13.08.2019 time was granted to defendants. But they failed to filed their W.S. on record. Consequently no W.S. order passed against them. Defendants set aside no W.S. order but failed to filed say on this application. So consequently no say order passed on dated 19.08.2019. Plaintiff already argued on application below exh. 22 and matter is kept for order on exh. 22. Hence defendant no. 1 to 4 and 6 only prolonging the matter. Inspite of having knowledge, they intentionally not filing say on this application. So he prayed for rejection of application with imposing heavy costs.

3. Heard learned advocate for both the sides. Perused the

record and documents. Present suit is for declaration of ownership and perpetual injunction. Defendant no. 1 to 4 and 6 appeared but failed to file their W.S. on record. Consequently no W.S. order set aside by them and their W.S. taken on record. This application is filed on dated 24.07.2019. But no any application for seeking time to file say on this application, so on dated 19.08.2019 order passed on exh.22 and the matter kept for no say order. On last date also no any application is moved by defendants. So matter kept for order. Today this application is moved.

4. Considering the nature of suit and claim of plaintiff, though there is delay in filing say on this application and there is no application for seeking time, the order for appointment of court commissioner is yet to be passed and learned advocate for defendant no. 1 to 4 and 6 is ready to file say and ready to argue on this application today itself. Hence, to give proper opportunity to defendants and to decide the application on merit, the application needs to be allowed. Hence, following order.

ORDER

Application is allowed only on the condition that Learned advocate for Defendant no 1 to 4 and 6 are directed to file say on the application below exh. 22 today itself and argue immediately.

Date : 04.09.2019.

(Y.D. Koinkar)
Jt.Civil Judge(Jr.Dn.),
Chakur