

MHND260003232017 	<u>ORDER BELOW EXH.18</u> <u>Madhav Vs. Siddheshvar +4</u> <u>REGULAR CIVIL SUIT</u> <u>NO.44/2017</u>
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This is application filed by defendants to set aside ex-parte order passed by this court on 03/11/2018.

2. Ld. Advocate for defendant Shri. S.N. Dhole submitted that, defendant have filed written statement on 13/03/2020. However, it is not exhibited as there was delay to filed written statement on record. Hence, no WS order was passed on 03/11/2018.

3. Ld. Advocate for plaintiff Shri. B. N. Hanmante submitted that, on 03/11/2018 no WS order was passed by this Hon'ble Court. The reason is not mentioned in this application about delay. Hence, application deserves to be rejected alongwith cost.

4. Heard. The original suit is filed for perpetual injunction against defendants on 25/07/2017 for restraining construction of house on Gut no. 200 to the extent of 60R situated at village Malegaon Tq. Ardhapur Dist. Nanded.

5. The defendants were served with summons on 21/08/2017 and they appeared in the court on 27/09/2017

through advocate Shri. S.N. Dhavle vide Exh. 10 vakalatnama is filed on record and on that day he filed application for adjournment. Thereafter defendant failed to appear before the court and directly appeared on 13/03/2020 and filed written statement on record without obtaining permission to file WS on record. In this case the plaintiff has filed his evidence affidavit on record vide Exh. 15 on 22/08/2019 and no cross order was passed on 14/10/2019.

6. There is a delay and negligence on the part of defendants. Moreover on inquiry with Id. Advocate for defendants he submitted that, already construction of house is completed and defendants started living there. In this way I am of the opinion that, the defendants have taken undue advantage of the legal process and they have done what they ought not to done during the pendency of suit.

7. Considering the above facts and circumstances and inordinate delay on the part of defendants. I am of the opinion that, as they must be heard and put their defence this application deserves to be allowed. However there is delay. Hence, heavy cost should be imposed upon them. I am of the opinion that, Rs. 15000/- cost for causing delay will be sufficient after taking into the consideration of the Covid-19 pandemic due to which courts were functioning in restricted manner from 15 March 2020 to 31 July 2021.

Hence, I proceed to pass following order-

ORDER

1. Application is allowed subject to cost of Rs. 15000/- payable to plaintiff on or before next date.
2. If, defendants failed to deposit or pay cost to defendant on or before next date matter will be proceeded accordingly.
3. Parties to take note of this.

Pronounced and dictated in open court.

Sd/-

(M.D.Birhari)
Civil Judge Jr. Dn.
Ardhapur

Date: 18/09/2021.

CERTIFICATE

I affirm that the contents of this [P.D.F.](#) file order are same, word to word, as per the original order.

Name of the Stenographer : S.S.Korewar

Court of : Civil Judge Jr. Dn. & J.M.F.C., Ardhapur, Dist. Nanded.

Date of pronouncement of Judgment : 18-09-2021

Judgment signed by the Presiding Officer : 18-09-2021

Judgment uploaded on : 20-09-2021