

Order below (Exh. 11)
(Passed on 20.12.2023)

This is an application filed by the defendants for permission to file written statement and counter claim and to set aside ex-party order.

2. In short, the defendant has submitted that the plaintiffs have filed the suit for declaration. The defendants were served with the suit summons. The defendants were out of town and failed to give their appearance on the fixed date. The ex-party order on 06.07.2023 was passed. The defendants immediately after getting the knowledge of the suit, are appearing before the court and wants to file written statement and counter claim. There is no deliberate intention on the part of the defendants to cause delay to the proceedings. To decide the matter on merit the written statement and counter claim of the defendants is essential. No prejudice would be caused to the plaintiff if the defendants are allowed to file written statement and counter claim. Hence, defendants prayed to allow the application.

3. The plaintiff filed his say on the application and strongly opposed to the application. The plaintiff submitted that the defendants were served with suit summons on

27.04.2023 as per Exh. 05 to 08. Thereafter the defendants failed to appear before the court. Ample opportunity were given to the defendants for their effective appearance, but they failed to appear and now causing intentional and unnecessary delay to the proceedings. No specific reason is stated in the application. Therefore plaintiff prayed to reject the application with heavy cost.

4. Perused the application, say and record. Heard both sides The present suit is filed by the plaintiff against the defendants for declaration. The summons was served on the defendants on 27.04.2023. As the defendants failed to appear in the matter ex-party order was passed on 20.07.2023. The present application is filed on 13.09.2023. There is no specific reason is mentioned in the application. But to give fair opportunity to the defendants, the application needs to be allowed. For deciding the suit on merit, the written statement of the defendants is essential. No prejudice will be caused to the plaintiff. The delay caused by the defendants can be compensated by imposing cost. Hence, in the interest of principle of natural justice, following order is passed.

ORDER

1. The Application is allowed subject to cost of Rs. 500/- payable to the plaintiff.

RCS 24/2023
CNR No. MHNG080006672023

Musaarat Yasmin Vs. Kamrunnisa

2. Ex-party order passed against defendants is set aside and they are permitted to file Written Statement after payment of cost.

Kamptee

Sd/-

Date : 20/12/2023.

**(Shri. Sagar S. Jadhav)
Jt. Civil Judge, Junior Division,
Kamptee.**

This is an application filed by the defendants for setting aside ex-parte order dated 16.08.2023.

2. In short, the defendants have submitted that on 16.08.2023 the court was pleased to pass an order below Exh. 1 to proceed ex-parte against the defendant Nos. 1-A and 1-B. The defendants have very good case on merit. If defendants are not allowed to participate in the proceeding then it will highly prejudice them. Hence, defendants prayed to allow the application.

3. The plaintiff filed his say and strongly opposed the application. It is contented by the plaintiff that the application is not supported by affidavit. So also no sufficient and justified ground has been raised in the application. Hence plaintiff prayed to reject the application with heavy cost.

4. Perused the application, say and record. Heard both sides The present suit is filed by the plaintiff against the defendant for mandatory injunction. The ex-parte is passed on 16.08.2023. On 15.09.2023 the present application is filed by the defendant to set aside ex-parte order. The right to sue survives. Hence, considering the nature of the suit it would be

proper to allow the defendants to contest the suit by filing their written statement on record. Due to which no prejudice would be caused to the plaintiff and the matter will be decided on merit. Hence, I pass following order :

ORDER

1. The Application is allowed.
2. Ex-parte order passed against defendant no. 1-A and 1-B is set aside and they are permitted to file Written Statement.

Kamptee

Date : 18/10/2023.

(Shri. Sagar S. Jadhav)
Jt. Civil Judge, Junior Division,
Kamptee.