

Order below (Exh. 10)
(Passed on 04.01.2024)

This is an application filed by the defendant for setting aside ex-parte order dated 16.10.2023

2. In short, the defendant has submitted that the defendant could not appear before the court on previous dates due to his personal difficulty. The court pleased to pass ex-parte order on 16.10.2023. Defendant do not have any knowledge about the proceeding takes place in court and inadvertently he was not able to secure his presence before the court on previous date. The defendant appointed the counsel and appeared in the matter. He found that the ex-parte order was passed. Therefore defendant prayed to allow the application in the interest of justice and to give defendant a fair chance by setting aside ex-parte order passed on 16.10.2023.

3. The plaintiff filed his say and strongly opposed the application. It is contented by the plaintiff that the court was pleased to pass ex-parte order on 16.10.2023. But the defendant had failed to file his written statement along with the said 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 under Section 281 of Mohammadian Law for restitution of Conjugal Rights. The defendant was served on 04.05.2023. As the defendant failed to appear in the matter ex-parte order was passed on 16.10.2023. The present application is filed by the defendant on 02.12.2023 to set aside ex-parte order. There is delay of more than 5 months. The reason mentioned in the application is not proper. But considering the nature of the suit it would be proper to allow the defendant to contest the suit by filing his 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 is set aside and he is permitted to file Written Statement.

Kamptee

Sd/-

Date : 04/01/2024.

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