

Spl. Civil Suit No. 5/2024
Motilal- Vs. Jayashree

ORDER BELOW EXH. 19

(Passed on this 7th of October 2025)

Read the application, say and record. Heard, Ld. Adv. Shri. P.M. Shrawane for plaintiff and Ld. Adv. Shri. Falke for defendant No. 2. This application has been filed by defendant No. 2 requesting to set aside no W.S. order and to permit to him to file W.S. Plaintiff has opposed the application by submitting that defendant No. 2 appeared on 24-06-2024 and this application has been filed on 24-06-2025. This defendant was and is not diligent in attending this matter. Exparte evidence has already been adduced. Therefore, it is requested to reject the application.

2] Question is whether application can be allowed in the facts and circumstances of this suit ?

3] Record shows that defendant No. 2 appeared on 24-06-2024. V.P. was filed at Exh. 11. Application seeking time to file W.S. was filed at Exh. 13. It was allowed. Suit was adjourned till 20-08-2024. Rojnama of date 20-08-2024 shows that P.O. was on leave. Plaintiff and advocate were absent. Defendant No. 2 was absent. But his advocate was present. However, rojnama does not show that W.S. has been filed by defendant No. 2 on that date. Copy of proposed W.S. of defendant No. 2 is on record. But it is below this application in sequence. It is true that such copy shows that defendant No. 2 solemnly affirmed contents of his W.S. on 20-08-2024 before Superintendent of C.J.S.D., Nagpur. However, this does not mean that such W.S. was placed on record in this suit on 20-08-2024. One thing is clear, from such affidavit that W.S. of defendant No. 2 was ready on 20-08-2024.

4] Suit was adjourned from 20-08-2024, till 25-09-2024, 12-11-2024 and 6-1-2025. On 25-09-2024, 12-11-2024 and 6-1-2025 defendant No.2 and his Ld. Advocate did not attend this matter. On 6-1-2025, this court passed no W.S. order below Exh. 1 and suit was adjourned for evidence till 3-3-2025. Thereafter, suit was kept on 22-4-2025. On that day evidence affidavit of plaintiff was filed. Suit was adjourned till 24-6-2025. This application has been filed on 24-6-2025.

5] It is submitted that junior advocate was present on 20-08-2024 alongwith W.S. but since the clerk told him that P.O. was on leave, junior advocate simply kept the W.S. on record. I think that if the W.S. had been placed on record, noting of it would have been reflected in the rojnama. In fact thereafter suit was adjourned on three occasions and on third occasion, no W.S. order was passed. On the next date in the matter of the date on which no W.S. order was passed, defendant No. 2 could have attended this matter to take the step or to bring to the notice of the court the above situation. However, it was not done so. Thus, there is delay on the part of defendant No.2 in filing W.S. However, suit is for specific performance of contract. Suit is proceeding without W.S. of defendant No. 1. Considering the nature of the suit and in the above background, it appears to me that W.S. of defendant No. 2 if taken on record will facilitate the just and effective disposal of this suit. Some cost needs to be imposed. Thus, I pass following order.

ORDER

1. No. W.S. order dated 6-1-2025 is set aside to the extent of defendant No. 2 subject to cost of Rs. 1000/- (Rs. One Thousand only) and after payment of such cost, Defendant No. 2 is allowed to file W.S.
2. Application is accordingly allowed.

Umred.
Dated: 07/10/2025.

[S. G. Landge]
Civil Judge Sr. Dn., Umred,
Dist. Nagpur.

Certificate

I affirm that the contents of this P.D.F. file are word to word same as per original.

Name of Stenographer : Mrs. D.T. Vighne
Stenographer (Grade II)