

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, UMRER

**Spl. Civil Suit No.03/2017
(Old Spl C.S. No. 761/2010)
Prashant Vs. Vijay+1**

ORDER BELOW EXH. 41

(Order passed on 13th day of August, 2018)

[01] Present application is moved by defendant no.1 for setting aside no W.S. order and for permission to file his written statement on record. Perused application and the say. Heard both sides. It has been contended by the applicant that he is suffering from siviour decease like H.I.V. and T.B. It is averred that due to siviour illness he couldn't submit his written statement within time. It is further averred that unfortunately his earlier counsel Mr.R.B. Rajurkar expired on 02.05.2017 and hence due to these unavoidable circumstances he couldn't submit his defense on record.

[02] On the other hand plaintiff filed his reply Exh.45 and has strongly opposed the application. It has been contended that the original suit is of the year 2010. Already after proceeding the matter without W.S. the suit was decreed in favour of the plaintiff. Thereafter, despite of the directions given in R.C.A.No.610/2015 and despite of knowledge present defendant no.1 failed to submit his W.S. within time. Thus, plaintiff prayed for rejection of the application.

[03] Considering the submissions made by both sides, if we go through the directions given by Hon'ble Appeleate court, it has been directed to dispose of the suit after giving the chance for submitting

the W.S. to both defendant no.1 and 2. As per direction of court defendant no.2 after depositing costs has submitted her W.S. on record. However, it is fact that the defendant no.1 failed to submit W.S. within time. However, as the matter relates to immovable property and the valuable rights of the parties are seen to be involved in the matter. Likewise, Hon'ble Appellate court has directed to dispose of the suit after giving an opportunity to file W.S. to the defendants. Hence, considering the facts and circumstances on record, a chance to submit W.S. needs to be given to defendant no.1. Hence, to decide the matter on merit and in the interest of justice, I proceed to pass following order.

ORDER

[01] Application (Exh.41) is hereby allowed.

[02] The written statement submitted by the defendant no.1 be taken on record.

Date : 13.08.2018

[S.K.Fokmare]
Civil Judge Senior Division
Umrer.

Certificate

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

Name of Stenographer : **Mr. Mahendranath D. Nagpure**
Stenographer (Lr.Gr.)
Court Name : Civil Judge Senior Division, Umrer
Date : 13/08/2018