

Spl. Civil Suit No. 62/2021
Rajendra Vs. Vijendra

ORDER BELOW EXH. 17

(Passed on this 25th of February 2025)

Read the application, say vide Exh. 24 and record. None appears for plaintiff. Heard Ld. Advocate for defendant No. 1. This application is filed by defendant No. 1 seeking permission to file W.S. It is submitted in the application that in the month of January 2022, wife of defendant No. 1 received suit summons. In fact bailiff should have taken the cell number of defendant No. 1 from family members to intimate him, but this has not been done. Wife of defendant No. 1 being unaware of importance of the notice, forgot to inform defendant No. 1 about it. While searching for other document in the home in the month of August 2022, defendant No. 1 found the papers of this suit in the Almira and thus has come to know about this suit. He appeared on 06-09-2022 and has filed application Exh. 14 under Order VII Rule 11 (b) of CPC. On 18-10-2022, he has placed on record copy of proposed W.S. But, he has not filed application seeking permission at the relevant time since there is no order of no W.S. against him. It is further submitted that his father was hospitalized prior to January 2021. Thereafter, there was Covid period and as such wife of defendant No. 1 forgot to inform him about the suit summons. It is for these reasons, there is delay in filing W.S.

2. Today Ld. Adv. for defendant No. 1 submits that there is no say from the side of the plaintiff to this application. However, record shows that say on behalf of plaintiff on this application has been filed on 5-3-2024 vide Exh. 24. In such say, it is contended that no document is placed on record to support the contention of illness of father mentioned in the application. In fact defendant No. 1 purposefully waited till the time when the court was going to pass ex-parte order. Grounds mentioned in the application are not reasonable. Therefore, it is requested to reject this application by imposing costs of Rs. 50,000/-.

3. Question is whether defendant No. 1 can be allowed to file W.S. as prayed for ?

4. Exh. 9 and 10 are the suit summons and notice of injunction application in this suit. They were issued in the name of defendant No. 1. Reports below them show that Rinku C. Malkhede who claims as sister of defendant No. 1 had received summons and notice on behalf of brother defendant No. 1 and had mentioned endorsement to that effect in English by putting her signature also. Thus, contention in the application that wife of defendant No. 1 received summons and notice is incorrect. The fact that sister of defendant No. 1 put the endorsement in English provides ground to infer that she is well educated and is expected to know the importance of notice and summons and as such is expected to have informed her brother defendant No. 1 about it. Thus, there is reason to infer that defendant No. 1 came to know about this suit in the month of January 2022 itself. However, he appeared on 06-07-2022. It is true that no W.S. order or ex-parte order has not been passed against him. However, this does not mean that there was no need for him to apply for condonation of delay in filing W.S. No document is placed on record to support the contention of defendant No. 1 about the illness of his father. Thus, the situation is this that he received information of the suit in the month of January 2022, has appeared in the suit on 6-7-2022 and has filed this application on 06-12-2022. Therefore, there is delay. However, suit is for cancellation of registered sale-deed. Considering such nature of the suit, it appears to me that W.S. of this defendant if taken on record will facilitate the just and effective disposal of this suit. Therefore, W.S. can be taken on record by imposing some costs. Thus, I pass following order.

ORDER

Application Exh. 17 seeking permission to file W.S. is allowed subject to costs of Rs. 500/- (Rs. Five Hundred only) to be paid to plaintiff.

Umred.
Dated: 25/02/2025.

[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)