

ORDER BELOW EXH.82
(Dated 28th November, 2024)

The Defendant No.7 filed this application to set-aside no W.S. Order dated 14.02.2017 passed against the Defendant No.7 and grant permission to file written statement on record.

2. The Defendant No.7 submitted that the matter is fixed for evidence. That after the receiving of suit summons, the Defendant No.7 appeared in this matter and appointed her previous counsel Adv. Shri Naware and handed over all the documents of her case to advocate. The Defendant No.7 was not having knowledge of legal process of law. Hence, she was under impression that her advocate had prepared and filed written statement but since, from many dates her previous advocate was not appearing in the Court. Hence, she made inquiry to her advocate, that time he told her that he is not able to conduct her case and he is not able to come to Parseoni Court. Therefore, the Defendant No.7 has appointed her new advocate. Thereafter, seeing the record by her advocate, he found that there is no W.S. Order against her came to be passed.

3. That due to the lack of knowledge about the legal proceeding and due to above said reason, the Defendant No.7 was unable to file her written statement. There is no any malafide intention of the Defendant No.7 behind not filing her written statement. Hence, for the proper adjudication of the matter and to give fair opportunity of being heard to Defendant No.7, it is necessary to set-aside the no W.S. Order passed against her and grant permission to file written statement.

4. The plaintiff filed say and strongly opposed the Application with submission that the Application is not tenable. The Defendant No.7 has lapsed time more than 7 years to file her written statement. This Hon'ble Court has passed an order ex-parte on 14.02.2017, thereafter, the plaintiff had filed T.I. Application and temporary injunction granted against the Defendant No.7 on 25.02.2020, that time also notices issued to the Defendant No.7. After receiving the notices, the Defendant No.7 willfully not appeared in the matter and not filed any application to set-aside the Order dated 14.02.2017. Hence, prayed for the cancellation of the said application.

5. Heard Learned Advocate for the Defendant No.7 and Learned Advocate for the Plaintiff. The plaintiff has filed the suit for partition and separate possession. As per the Report

at Exh.20, suit summons duly served on Defendant No.7 but she did not appeared before the Court. Hence, on 14.07.2014 order came to be passed to proceed the suit against the Defendant No.7 ex-parte. On 21.12.2017 issues framed, thereafter, the matter was fixed for evidence of the plaintiff. The plaintiff filed his affidavit evidence at Exh.67 and completed her examination-in-chief on 13.09.2022.

6. The Defendant No.7 has made allegation against her previous advocate that he did not provide the proper information to the Defendant No.7 therefore, she could not file her written statement on record but, the record shows that on receipt of the suit summons she failed to appear before the Court. Therefore, order to proceed ex-parte came to be passed against her. Neither the Defendant No.7 appeared in-person or through advocate.

7. The Learned Advocate for the Plaintiff argued that the Defendant has lapsed 7 years to file her written statement. Order to proceed ex-parte passed on 14.02.2017. The Defendant No.7 moved this application on 18.07.2024. The matter is fixed for the evidence of the plaintiff. At this stage, the Defendant No.7 appears and seeking permission to set-aside the order to proceed ex-parte and permission to file her written statement. Learned Advocate for the Defendant No.7

::4::

relied on the ratio in the authority Sambhaji and Others Vs. Gangubai and Others and submitted that the grounds for non-filing of written statement by the Defendant No.7 should be considered and the nature of the suit is for the partition and possession of the suit property. Therefore, for the effective and final adjudication of the suit, the written statement of the Defendant No.7 is necessary on record.

8. It is admitted that the plaintiff has filed this suit in the year of 2016 and the Defendant appeared before the Court in the year 2024 i.e. after 7 years from the date of order passed against her. That for the principle of natural justice, the Defendant No.7 should be heard and the decision should not be passed behind her back. The written statement of the Defendant No.7 is necessary to decide the real controversy and final adjudication of the suit but, at the same time, the delay caused in the proceeding cannot be ignored. The inconvenience caused to the plaintiff can be compensated by imposing proper cost. Considering, all these facts and circumstances, I pass following order:

ORDER

::5::

1. Application is hereby allowed subject to cost of Rs.5,000/- (Rupees Five Thousand Only).
2. Order passed below Exh.1 on 14.02.2017 to proceed the suit ex-parte against the Defendant No.7 is hereby set-aside and permission granted to file her written statement.
3. Cost is condition precedent.

Parseoni.
Date 28/11/2024

(G.O.Wankhade)
Civil Judge Junior Division,
Parseoni