

MHNG160001762015



R.C.S. No. 19/2015
(CNR No. MHNG160001762015)

Common Order Below Exh. 1 & Exh.117
(Date 03.01.2026)

Defendants no.4 & 5 made the instant application with the prayer to set aside ex-parte order passed against them below Exh.1, dated 04.02.2023.

02. It is contention of the defendants that, defendant no.4 and defendant no.5 received suit summons on 09.06.2022 and 10.06.2022 respectively. However, due to their personal discrepancies they could not approach to their concern advocate to intimate them about the same. So also, they could not file their written statement in the present suit. Accordingly, ex-parte order passed against them. It is also their contention that, their presence is necessary to decide the suit finally on merit. Hence, they made instant application.

03. Plaintiffs filed their say vide Exh.121. They resisted the instant application on the various ground. They submitted that, the application is not signed by the defendants. The same was only signed by their respective advocate. So, the same is not tenable in the eyes of law. They further submitted that, the instant application is time barred. It is also contention of

plaintiff that, Ld. Advocate Shri. Borkar, appearing for defendants no.4 and 5 however, he failed to file their written statement within statutory period. He also failed to take necessary steps to set aside ex-parte order within statutory time. Defendants do not put forth any valid reason for not filing their written statement within statutory time. Plaintiffs finally submitted to reject the application.

04. Perused the application, say thereon. Heard to both the parties.

05. It is pertinent to note here that, to decide the controversy involved in the suit, Court has to frame issues. While framing issues Court has to consider rival pleading and material placed by both the parties to the suit. When there is only pleading of plaintiff and not of all defendants then, it will not be possible to frame appropriate issue to finally resolve the dispute between the parties to the suit. So, I am of the opinion that, to frame the issues and thereby to inform to the parties to the suit, the points on which they have to lead their respective evidence, pleading of all the parties to the suit is necessary to have on record. Hence, considering this fact, I am of the opinion that, to frame issues in the present suit, the written statement of both these defendants is also necessary. For that purpose, it is necessary to set aside an ex-parte order passed against them. By the same time we also take into consideration that, due to inactivity on the parts of these defendants hardship caused to the plaintiffs. So, while giving an opportunity to the defendant to file their written statement it is also necessary to impose cost upon them to compensate hardship caused to the plaintiffs. Hence, considering above discussion, I proceed to pass following order :

ORDER

1. Application vide Exh.117 is allowed subject to cost of Rs.3000/- to each defendant.
2. Ex-parte order passed against defendant no.4 & 5 below Exh.1 dated 04.02.2023 is hereby set aside.
3. Amount of the cost be paid to the plaintiffs.

Date : 03.01.2026.

(L.M. Pathan)
Civil Judge Junior Division,
Mouda.