



**ORDER BELOW EXH. NO.24**

In a suit for perpetual injunction, this application is filed by the defendants to set aside no W.S. order passed against him.

2. Ld. advocate for the defendants submitted that, due to illness of the defendant no.2, lock-down of Covid-19, operation of coronary angiography, bed rest suggested by doctor and non availability of the important documents required to file W.S., the defendants could not file their W.S. within stipulated period of time. Therefore, no W.S. order is passed against them. Hence, by this application they are seeking to set aside the said order of “No W.S”.

3. The plaintiff has strongly resisted this application. It is submitted that, the defendants are duly served and they appeared through advocate on 27/01/2019. The defendants then moved application seeking time to file their W.S. However, they did not file the same and remained absent for long period, which caused delay in the matter. Due to their failure “No W.S.” order is passed. Thereafter, plaintiffs have filed evidence affidavit at Exh.No.19 on 13/03/2024. Reasonable opportunities were given to the defendants but defendants failed to file their W.S. It is also submitted that, suit is filed in the year 2019, defendants have appeared in 2019 however did not file W.S. till 16/08/2024. Hence, he prayed to reject the application. It is also submitted that, if application is allowed, heavy cost of Rs.5,000/- be imposed for causing delay in proceeding.

4. Perused the application and say filed thereon. Heard both the

..2..

sides and considered their submissions. It is contended in the application that, after being duly served the defendant no.2 began to suffer from heart disease and he had to gone through angioplasty. Defendant no.2 was suggested to take rest, therefore he could not meet his advocate to provide information and related documents for filing W.S. Thereafter, due to Covid-19 and lock-down declared by the government defendants could not attend the court proceeding. Defendant no.1 had to take care of defendant no.2. Therefore, defendants could not file their W.S. within stipulated period of time. These contentions of the applications are supported by the documents filed on record at Exh.No.27 which includes documents on medical report of Sahyadri Hospital, Nashik and test report of defendant no.2, carried at Nashik laboratory. Medical report and laboratory tests shows that, defendant no.2 diagnosed with acute coronary syndrome and his operation of coronary angiography was done on 11/08/2019. Thereafter, defendant no.2 was found positive in Covid-19 test. Therefore, there is no reason to disbelieve the contentions of the application. The application is supported by the affidavit at Exh.No.25.

5. The defendants have also filed copy of their W.S. and affidavit in support of the said W.S. at the time of moving this application for setting aside No W.S. order. In present case the delay seems unintentional. If this application is rejected it may cause prejudice to the defendants. At the same time delay occurred to the plaintiff may be compensated. Under such circumstances it would be just and proper to provide fair and equal opportunity to the defendants in the interest of justice by allowing them to file their W.S. Hence, I pass following order;

### **ORDER**

1. The application at Exh.no.24 is allowed, subject to cost of Rs.2000/- which is to be paid to the plaintiff on or before next date i.e. 09/07/2025.

..3..

2. No W.S. order passed below Exh.No.01 against the defendants is hereby set aside.
3. The W.S. and affidavit filed in support of the said W.S. be taken on record and exhibited on payment of cost of Rs.2,000/-.

Date :- 12/06/2025  
Place :- Pimpalgaon (B).

Sd/-xxx  
( V. W. Khendad)  
2<sup>nd</sup> Jt.Civil Judicial Junior Division  
Pimpalgaon (B)