

ORDER BELOW EX. 21**(Passed On 25th March 2021)**

1. This is an application for setting aside exparte order and order and permission to file written statement on record filed by defendant No. 1 to 3.

2. Perused the application and read the reply. I have heard Mr. P. S Nikol learned counsel for defendants and Mr. R. P Thakare learned counsel for plaintiff.

3. Mr. Nikol learned counsel for defendants submitted that plaintiffs have filed present suit for declaration and perpetual injunction against defendants. Mr. Nikol submitted that defendant No. No. 1 to 3 failed to appear in court and thus exparte order was passed against them on 07-11-2019. Mr. Nikol submitted in absence of written statement of defendants they would suffer irreparable loss. Mr. Nikol submitted in consonance to his application and prayed to set aside order of exparte against defendant No. 1 to 3 and to permit defendants to file written statement on record and accordingly prayed to allow the instant application.

4. Mr. Thakare learned counsel for plaintiffs vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Thakare submitted that defendant No. 1 to 3 are negligent and careless in the instant matter though they were served with summons as per report on Ex. 8 & Ex. 9. Mr. Thakare submitted that Court

had passed order of exparte on 07-11-2019 and present application is filed on 01-01-2021 this itself reveals the vigilance and diligence of defendant No. 1 to 3 in contesting the present matter. Mr. Thakare submitted that present application is filed on 01-01-2021 that too after lapse of around 03 months with ulterior motive just to harass plaintiffs and to prolong the present matter. Mr. Thakare submitted in consonance to his reply and prayed to outrightly reject it with heavy cost.

5. On perusal of record it reveals that exparte Order was passed against defendant No. 1 to 3 on 07-11-19 and present application is filed on 01-01-2021. The instant matter is of the year 2019 and though present application is filed after lapse of around 14 months but an opportunity needs to be given to defendant No. 1 to 3 to contest the present suit. It is pertinent to mention that no prejudice as such would be caused to plaintiff if they are compensated by cost. On the basis of arguments of rival sides, I am of the opinion that instant application needs to be allowed in the interest of justice. I am inclined to pass following order.

ORDER

1. The application at Ex. 21 is allowed subject to payment of cost of Rs. 1000/- (One Thousand Only) to other side & Rs. 1000/- (One Thousand Only) in TLISA. On failure to pay cost to plaintiff/deposit costs in Court instant matter would proceed further in accordance with law.

2. Defendant No. 1 to 3 are allowed to file their written statement on record, after payment of cost.

Place:- Chandwad

Date:- 25/03/2021.

(N. A Ingley)
Civil Judge Junior Division
Chandwad

CERTIFICATE

I affirm that the contents of this PDF file are same word for word as per original order.

Name of Stenographer :- Kum. D. D. Dhoke.
Court Name :- Civil Judge J.D. Chandwad.
Date of Decision :- 25-03-2021.
Signed by presiding :-
officer :- 25-03-2021.
Uploaded on :- 26-03-2021.