

**ORDER BELOW EXHIBIT 42 IN RCS NO.166/2019**

1] The present Application is preferred by the Defendant No.3 praying that, the *ex parte* order passed against him be set aside and written statement and say be taken on record. *Vide* the present application, the Defendant No.3 has submitted that, Defendant No.1 has illegally taken his summons. That, Defendant No.3 had filed case against Defendant No.1 regarding which execution proceeding is pending and Defendant No.1 has no right to receive the summons. The Defendant No.3 was not aware of the present proceeding and the matter was proceeded in collusion with Defendant No.1. As soon as the Applicant became aware of the present matter, he appeared and after obtaining necessary documents, he is now seeking permission to file written statement and say. That, the case pertains to immovable property. That, delay is not deliberate and in order to decide the matter on merits, it is necessary that Applicant be allowed to file his written statement. Hence, it is prayed that, the present application be allowed. Affidavit in support of the present application is filed at Exhibit 43.

2] The present Application is objected by the Ld. Advocate for the Plaintiffs by submitting that, the reasons mentioned are not justified. That Defendant No.2 and 3 had filed RCS No.189/2004 against Defendant No.1, execution proceeding R.D.No.8/2019 is pending. In the said proceeding on 26/06/2019 at Exhibit 12, Plaintiff filed application to be made party to the proceeding. On 07/12/2022, at Exhibit 25 the Plaintiff herein filed a copy of Exhibit 1 of the present proceeding. The said application came to be allowed and copy of Exhibit 1 of the present proceeding was taken on record. That

the Defendant No.2 and 3 were aware of the present proceeding and deliberately did not appear. Hence, the present application may kindly be rejected.

3] Heard. Perused record. It appears that, as per bailiff report at Exhibit 9, summons was received by Defendant No.1 on behalf of Defendants No.2 and 3. Thereafter on 24/07/2019 *ex parte* order was passed. Thereafter, it appears that the Defendant No.1 has not filed written statement or put up a defence in the present matter. It appears that, the present suit is filed to set aside the judgment in RCS No.189/2004 filed by Defendants No.2 and 3 against Defendant No.1 and decreed. Thus, it appears that the relationship between Defendant No.1 and Defendant No.2 and 3 is not amicable. In these circumstances, it is unclear why summons was accepted by Defendant No.1. It also appears that the present suit filed by purported second wife and children of Defendant No.1. The Defendant No.2 and 3 have appeared on 15/06/2023. The present application alongwith copy of written statement is filed on 13/07/2023. In these peculiar circumstances, it would be just and appropriate to allow the present application as prayed. Hence,

### **ORDER**

- 1] Application is allowed vide Section 151 of C.P.C.
- 2] Application is accordingly disposed off.
- 3] Costs on Applicant.

Sd/-

**(Smt.P.S.G.Chalkar)**

Jt.Civil Judge Junior Division,  
Tuljapur-Dharashiv

Place : Tuljapur  
Date : 23/02/2024.

**CERTIFICATE**

I affirm that, the contents of this P.D.F file  
Judgment/order are same, word to word, as per the original  
Judgment/order.

Name of Stenographer	---	Quadri M.F.
Court	---	Jt.CJJD & JMFC Tuljapur
Date	---	23.02.2024
Order signed by the Presiding Officer on	---	23.02.2024
Order uploaded on	---	26.02.2024