

ORDER BELOW EXHIBIT 46 IN RCS NO.166/2019

1] The present Application is preferred by the Defendant No.2 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.2 has submitted that, Defendant No.1 has illegally taken his summons. That, Defendant No.2 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.2 was not aware of the present proceeding and the matter was proceeded in collusion with Defendant No.1. As soon as the Applicant and Defendant No.3 became aware of the present matter, they appeared and after obtaining necessary documents, Defendant No.3 sought permission to file his written statement and by way of *pursis* the present Applicant seeks to adopt the written statement. 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 put up his defence. Hence, it is prayed that, the present application be allowed. Affidavit in support of the present application is filed at Exhibit 47.

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 *pursis* adopting the written statement of Defendant No.3 is filed on 18/08/2023. 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.PS.G.Chalkar)

Place : Tuljapur
Date : 23/02/2024.

Jt.Civil Judge Junior Division,
Tuljapur-Dharashiv

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