

Order below Exh.36.

Present application is filed on behalf of defendant No. 1 to 4 for setting aside No W.S order. Plaintiff resisted the application by filing say.

2. It has been contended on behalf of defendant No. 1 to 4 that defendant could not get the documents required from different offices. Therefore defendant No. 1 to 4 failed to file W.S within stipulated time. Hence, the No W.S order came to be passed. Hence, he prayed for setting aside No W.S order.

3. Ld. advocate of the plaintiff resisted the application on the ground that sufficient time has been granted to defendants for filing say and W.S. and the reason mentioned is not proper. Hence, prayed for rejection of application.

4. Suit summons is served on defendant No.1 but failed to appear. Therefore, exparty order came to be passed on 19.12.2016. Further, though the defendant 2 to 4 appeared in the matter failed to file W.S within stipulated period. Therefore, no W.S order came to be passed on 19.12.2016. The reason mentioned by the defendant No.1 to 4 is not sufficient. The defendants had an opportunity to collect the documents and filed their W.S. within time. It appears that the defendant No. 1 to 4 has caused delay for filing W.S. deliberately. However, considering the principal of natural justice the opportunity of hearing needs to be given to

defendant No. 1 to 4. In order to decide the rights of the parties conclusively written statement of defendant No. 1 to 4 needs to be accepted. It would be apposite to decide the matter on merit. Delay can be compensated by awarding cost. Hence, I proceed to pass the following order.

ORDER

- 1 The application is allowed.
- 2 No W.S order against defendant No. 2 to 4 and Exparte order against defendant No. 1 is hereby set aside subject to Cost of Rs.400/- be paid to plaintiff.

Date : 01.04.2017.

(T. P. Mote)
2nd Jt. Civil Judge, Junior Division,
Tuljapur.