

MHOS100001272011



Reg.Civil Suit No.02/2011
(CNR No.MHOS100001272011)

Order below Exh.46

1. The defendant No. 3 has filed the present application for permission to file written statement on record by setting aside the 'Ex-parte' order dated 28/01/2020.

2. The defendant No.3 submitted that, he is residing at Bhugaon, Tal. Mulshi, Dist. Pune. Summons was issued through paper publication by plaintiff in Dainik Prabhat, but the said paper does not circulate at Tal. Mulshi, Dist. Pune and therefore he was not aware about the suit summons. Defendant No. 3 submitted that, on 08/09/2022 he came to known about the present matter through his relatives. Therefore, he could not remained present before the Court and he could not filed his written statement within statutory period and therefore, ex-parte order was passed against him on 28-01-2020. He further submitted that, if the opportunity of filing written statement is not given to him then he will suffer irreparable loss. Hence he prayed that, he may be permitted to file his written statement on record by setting aside the ex-parte order.

3. The say of plaintiff was called. The plaintiff has objected the application by stating that, on 18/11/2019 summons was served to the defendant No. 3 through paper publication. The defendant No. 3 was very well aware about the present matter but to prolong the present matter, he could not appeared in the present matter. Hence, he prayed to reject the application with costs.

4. Read application and say. Heard. Perused the record. On perusal

of record it reveals that, summons was duly served through paper publication dated 18 November, 2019 and said paper has been filed on record. Therefore, the defendant No. 3 ought to have filed his written statement within stipulated time as provided under Order VIII Rule 1 of The Code of Civil Procedure, 1908. However, considering the reasons mentioned by the defendant No.3 in the application, matter is old one and in order to decide the matter on merits, it would be just and proper to give an opportunity to defendant No.3 to file his written statement on record.

5. The provision of Order VIII Rule 1 of The Civil Procedure Code are directory in nature. In this view, considering the peculiar facts and circumstances of the case, the application deserves to be allowed. On the other hand, the plaintiff must be compensated in terms of costs. Hence, I proceed to pass the following order :-

ORDER

- 1) The application is hereby allowed subject to costs of Rs.1000/- (Rs.One Thousand), to be paid to the plaintiff.
- 2) Ex-parte order dated 28/01/2020 passed against the defendant No.3 is hereby set aside and he is permitted to file his written statement on record.
- 3) The written statement filed by defendant No.3 be taken on record after the payment of costs.

Date : 12/09/2022
Washi

(J. S. Gaikwad)
Civil Judge Junior Division,
Washi

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	---	A.A. Joshi, Stenographer, (Grade-III)
Court	---	Civil Court,Washi,Tal.Washi, Dist.Osmanabad
Date	---	12-09-2022
Order signed by the presiding officer on	---	12-09-2022
Order uploaded on	---	13-09-2022