

ORDER BELOW EX. 07**(Passed On 16th February 2024)**

1. This is an application for setting aside exparte order and permission to file written statement on record filed by respondent.
2. Perused the application and read the reply. I have heard Mr. S.S. Tambe learned counsel for respondent and Mr. K.S. Ovhal learned counsel for petitioner.
3. Mr. Tambe learned counsel for respondent submitted that petitioner has filed present restitution proceeding against respondent. Mr. Tambe submitted that respondent failed to appear in court and thus exparte order was passed against him on 06-12-2023. Mr. Tambe submitted in absence of written statement of respondent he would suffer irreparable loss. Mr. Tambe submitted in consonance to his application and prayed to set side order of exparte Order against respondent and to permit respondent to file written statement on record and accordingly prayed to allow the instant application.
4. Mr. Ovhal learned counsel for petitioner vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Ovhal submitted that respondent is negligent and careless in the instant matter though summons were served on him as per report on Ex. 06. Mr. Ovhal submitted that Court had passed order of exparte on 06-12-2023 and present application is filed on 06-12-2023 at fag end of the day, this itself reveals the vigilance and diligence of respondent in contesting the present matter. Mr. Ovhal submitted that present application is filed on 06-12-2023 with ulterior motive just to harass petitioner and to

prolong the present matter. Mr. Ovhal submitted in consonance to his reply and prayed to out rightly reject it with heavy cost.

5. On perusal of record it reveals that exparte Order was passed against respondent on 06-12-2023. and present application is filed on 06-12-2023 at the fag end of the day. The instant matter is of the year 2023 and though present application is filed at the gag end of the day but an opportunity needs to be given to respondent to contest the present proceeding. It is pertinent to mention that no prejudice as such would be caused to petitioner if he is 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. In the result, I am inclined to pass following order.

ORDER

1. The application at Ex. 07 is allowed subject to payment of cost of Rs. 350/- (Three Hundred and Fifty Only) to other side. On failure to pay cost to petitioner/deposit costs in Court instant matter would proceed further in accordance with law.

2. Respondent is allowed to file his written statement on record, after payment of cost.

Place:- Kallam

Date:- 16/02/2024

Sd/-

(N. A Ingley)

Civil Judge Senior Division

Kallam

CERTIFICATE

This is to certify that the Presiding Judge has himself typed the order and contents of this copy are correct as per original order. I have duly examined and found to be correct as per the original. The order is uploaded by Stenographer after taking it in Pen Drive.

Dictated on	:	Personally Typed By Presiding Judge.
Transcribed on	:	16/02/2024.
Checked & Signed on	:	16/02/2024.

Sd/-
(S.R.Kale)
Stenographer Grade-II
Civil Court Senior Division,
Kallam.