

ORDER BELOW EX. 13
(Passed On 01st September 2023)

1. This is an application for setting aside No WS order and permission to file written statement on record filed by respondent No. 2.

2. Perused the application and read the reply. I have heard Mr. J.S. Patil learned counsel for respondent No. 2 and Mr. S.B. Nere learned counsel for claimant.

3. Mr. Patil learned counsel for respondent No. 2 submitted that claimant has filed present reference proceeding against respondents. Mr. Patil submitted that respondent No. 2 failed to appear in court and thus No WS order was passed against him on 14-07-2023. Mr. Patil submitted in absence of written statement of respondent No. 2 he would suffer irreparable loss. Mr. Patil submitted in consonance to his application and prayed to set side order of No WS Order against respondent No. 2 and to permit respondent No. 2 to file written statement on record and accordingly prayed to allow the instant application.

4. Mr. Nere learned counsel for claimant vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Nere submitted that respondent No. 3 is negligent and careless in the instant matter though summons were served on him and he had appeared through his counsel on 21-01-2022. Mr. Nere submitted that Court had passed order of NO WS on 14-07-2021 and present application is filed on 01-09-2023 this itself reveals the vigilance and diligence of respondent No. 2 in contesting the present matter. Mr. Nere submitted that present

application is filed on 01-09-2023 that too after lapse of stipulated period of limitation of filing WS with ulterior motive just to harass claimants and to prolong the present matter. Mr. Nere submitted in consonance to his reply and prayed to out rightly reject it with heavy cost.

5. On perusal of record it reveals that NO WS Order was passed against respondent on 14-07-2023 and present application is filed on 01-09-2023. The instant matter is of the year 2021 and though present application is filed after lapse of stipulated period of limitation of filing WS but an opportunity needs to be given to respondent No. 2 to contest the present proceeding. It is pertinent to mention that notice were sent to respective parties and even Letter were sent to Bar association, Osmanabad regarding transfer of present matter to this newly established Court of CJSD at Kallam hence, it can be inferred that parties and even their counsel had knowledge about transfer of present matter to this Court. It is also pertinent to mention that no prejudice as such would be caused to claimant 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. 13 is allowed subject to payment of cost of Rs. 350/- (Three Hundred and Fifty Only) to other side. On failure to pay cost to claimant/deposit costs in Court instant matter would proceed further in accordance with law.

2. Respondent No. 2 is allowed to file his written statement on record, after payment of cost.

Place:- Kallam

Date:- 01/09/2023

(N. A Ingley)
Civil Judge Senior Division
Kallam