

MHPA190003712023



Order below Exh. 41 in R. C. S. No. 39/2023

Rangnath Kundalikrao Surwase

V/s

Jagnnath Kundalikrao Surwase

1. This is an application defendant No.1 for setting aside No. written statement order passed against him on 18/9/2023.
2. He has stated that defendant No. 2 was suffering from H.I.V. He required to take him for treatment out of station. During treatment, he died. His wife is also suffering from brain tumour. He also required to take her for treatment out of station from time to time. Therefore, he could not remain present in the court in this case. Considering these facts, opportunity to file written statement should be granted to him. Otherwise, he will suffer irreparable loss. On these grounds, he has prayed to set aside No written statement order passed against him on 18/9/2023.
3. Plaintiff has filed say behind the application that application is false, frivolous, and vexatious. He has filed this application deliberately after 2 to 3 years just to prolong this suit. He has disobeyed interim injunction order passed by the court deliberately. He is facing another civil application for it. He is adamant, having less fear of law. He has filed this application by concocting false story. This application is not supported by filing application for condonation of delay with day-to-day explanation for delay. He is in possession of 8 Acre land and he is not allowing plaintiff to cultivate his share of 4 Acre land even after granting interim application against defendant. Plaintiff and his family are facing starvation due to obstruction in cultivation of suit land caused by defendant. This application is classic example of abuse of process of law. On these grounds, he has prayed to reject this application with heavy costs.
4. Heard Learned Advocate A. S. Joshi for defendant No. 1 and Learned Advocate R. P. Surwase for plaintiff. Perused record of the case.
5. Present suit is filed for perpetual injunction restraining defendants or their agents, servants or anybody acting through them from obstructing, interfering and disturbing plaintiff's possession over suit property A to C & E and recovery of possession of 1 Are land suit property D, which was illegally encroached upon and possessed by defendants. In spite of service of summons Exh. 10 on 9/6/2023, defendants No. 1 & 2 have failed to file written statement within stipulated time. Hence, case shall proceed against defendants without

L. Sakavajga
13/12/23

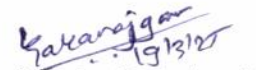
their written statement vide order dated 18/9/2023. Defendant No. 1 has filed copy of laboratory report of HIV Antibody Test of defendant No. 2 dated 13/6/2013 at Exh. 44/1, copy of Certificate of Vulnerable Diseases bearing No.C.H.P./DAPUC/845/2022 issued to defendant No. 2 by Senior Medical Officer, Civil Hospital, Parbhani on 5/11/2022 at Exh. 44/2, copy of Patient Booklet (Green Booklet) of defendant No. 2 issued on 14/6/2013 at Exh. 44/3. Plaintiff has filed his affidavit of examination-in-chief at Exh. 21 on 22/2/2024. No cross order passed against defendants on 28/3/2024. Plaintiff's witness Mujahid Khan Karim Khan Pathan has filed affidavit of examination in chief at Exh. 38 on 27/6/2024. No cross order passed against defendants on the same day. Plaintiff has filed evidence close pursis at Exh. 39 on 27/6/2024. The court has passed order below Exh. 14 on 21/7/2023 directing Police Inspector, Manwat Police Station, Manwat for implementation of order passed below Exh. 8 dated 16/6/2023. Defendants' evidence was closed vide order passed below Exh. 1 on 26/9/2024. Plaintiff has argued on application Exh. 35 and final argument on 22/1/2025. Exh. 35 was allowed on 19/3/2025. At this stage, defendant No.1 has filed this application belatedly. Considering the nature of suit for perpetual injunction regarding suit property, i.e. immovable property, opportunity needs to be given to defendant No.1. However, the inconvenience caused by defendant to plaintiff for the delay, can be compensated by awarding just and reasonable costs to him. Therefore, I proceed to pass the following order:

ORDER

- 1) Application Exh. 41 is allowed subject to payment of costs of Rs. 3,000/- on or before next date.
- 2) Both the parties shall expediate hearing of the suit. Case shall be fixed on every Monday and Thursday till decision in this suit.

Manwat

Date: 19/3/2025


(G. A. Karajgar)

Civil Judge Junior Division, Manwat