

**ORDER BELOW EXH.19****(Passed on 11/09/2019)**

1. Read application and say filed on overleaf. Heard learned advocate Shri. S.G. Walekar on behalf of applicant/defendant and learned advocate Shri. M.B. Jaugude for plaintiff. By this application defendant is challenging the order below Exh.5 dated 29/08/2019, on the ground mentioned under O.39 R.3 of the Code of Civil Procedure 1908 (hereinafter referred 'Code'). As per proviso (b) of O.39 R.3 of the Code, if ex-party injunction is granted against defendant without issuing notice, then the applicant have to sent to copies of all necessary documents as per Proviso (a) and to file affidavit on that day or on day immediately following that day.

2. In the present case relief in respect not alienate suit property I.e. not to create third party interest is granted in favour of plaintiff without hearing defendant, on 29/08/2019. As per affidavit (Exh.11) plaintiff has complied this order on 31/08/2019. Thus there is delay of 1 day to comply the order dated 29/08/2019. The present suit is in respect of agriculture land. Learned advocate for the defendant submitted that the above proviso is mandatory and at any cost the relief granted on 29/08/2019 have to be vacated, on this sole ground. It is to be noted that plaintiff has complied the order dated 29/08/2019. No doubt there is delay of 1 day. The 'Code' is a procedure law and not substantive law. The procedure law have to be interpreted liberally. Procedure law is a lubricant, not a resistant in the administration of justice. Even if above provision is

mandatory, considering the nature of suit, relief granted against defendant, no prejudice would be caused to defendant if that order is not complied within statutory time. Another fact whether prejudice is caused to defendant or not is not question to be considered at this time. Whether this mandatory provision is complied or not still the fact of 1 day delay have to be considered on its own footing. Even that proviso is mandatory but considering the Code as a procedure law, it is not proper to vacate this order without hearing parties. If defendant is aggrieved by order dated 29/08/2019, a specific direction in this respect was already given. This application being on purely technical law point, not liable to be considered at this stage. Accordingly application Exh.19 is rejected. However, the issue of 1 day delay and it's consequence is kept open and defendant is at liberty to argue on this point at the time of hearing Exh.5.

Date: 11/09/2019

(S.K.Mule)
C.J.J.D Bhor, Dist. Pune

“I affirm that the contents of this P.D.F file Judgment are same word for word as per original Judgment.

Name of the Steno : Shri. V.G.Fulari

Court Name : Shri.S.K.Mule

C.J.J.D., Bhore, Dist. Pune.

Date : 11.09.2019,

Judgment signed by presiding officer on :11.09.2019,

Judgment uploaded on : 13.09.2019,”