



R.C.S. NO.122/2022
Prasad Balkrushna Bhalerao
Vs
Hiraman Bhimaji Bhalerao

ORDER BELOW EXH. NO. 33

The defendant No.2, 3, 4 and 6 have filed this application for setting aside 'Exparte' order passed against them.

2. The Ld. advocate for defendant No.2, 3, 4 and 6 submitted that on 15/07/2022 summons was duly served to defendants. On 08/11/2022 defendants have appointed their advocate but he was suffering from kidney disease. Moreover, the defendant No.2 was undergoing his eye treatment and for the same defendant No.3 used to accompany him in the hospital. The husband of defendant No.4 was taking treatment and therefore, she is accompanied with him. Further the defendant No.6 is an old age person. The Ld. advocate for the defendants further submitted that due to aforesaid reasons the defendants could appeared before the Court, therefore, on 13/09/2022 'Exparte' order was passed against the them. He further submitted that to decide the matter on merit the defence of defendant No.2, 3, 4 and 6 necessary to be taken on record. If the exparte order is not set aside, the defendants will suffer irreparable loss. Therefore, prayed to set aside 'Exparte' passed against them.

3. The Ld. advocate for the plaintiffs have filed their say overleaf and strongly opposed the present application. He argued that that the present application is false and frivolous. The defendants have not filed any medical certificate to support their contention. Therefore, prayed to reject the present application.

4. Perused application and say filled by the plaintiff. Heard both sides.

5. On perusal of record it appears that on 13/09/2022 'Exparte' order was passed against them. The present suit is

instituted for the declaration and injunction. It is the contention of the defendants due to medical condition they cannot appeared before the Court after service of summons. Further by adopting the lenient approach, I am of the opinion that it is necessary to give one more opportunity to the defendants to contest the suit on merit. Moreover, it will help to adjudicate the dispute between the parties. The instant application is filed on 29/04/2024. Admittedly, there is 1 year 9 months 14 days delay in filing the said application. However, in my opinion, the defendants need to be saddled with the cost for avoidable expenses that had to be incurred by the plaintiff for opposing the present application. Considering the reasons mentioned in the application it appears to be satisfactory to set aside an 'Exparte' order. The inconvenience is being caused to the plaintiffs can be compensated by imposing a cost. Hence, I pass the following order.

ORDER

1. Application at Exh.33 is allowed subject to cost of Rs.500/- to be paid to the the plaintiffs.
2. Ex-parte order dated 13/09/2022 passed against defendant No.2, 3, 4 and 6 is set aside.

Sd/-

(Sagar S. Mohite)

2nd Jt. C. J. J. D., Ghodegaon,
Dist. Pune

Dt.06/05/2024
Ghodegaon

CERTIFICATE

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

Name of the Court	: Shri. Sagar. S. Mohite, 2 nd Jt. C.J.J.D. and J.M.F.C., Ghodegaon, Dist. Pune.
Name of the Steno	: J. S. Kaite, Steno Grade - III.
Judgment date	: 06/05/2024
Judgment signed by P.O. on	: 06/05/2024
Judgment uploaded on	: 07/05/2024