

Order below Exh. 38 in R.C.S. No. 81/2016

1. This is an application given by defendant no.03 for setting aside Ex-parte order.

2. According to defendant no.3, he was trying to settle the dispute with plaintiffs, amicably out of the Court. Then after defendant no.03 took ill because of which he could not appear in the suit. Hence, on 20.03.2017 ex-parte order was passed against him. Now, he wants to appear and defend the claim of plaintiffs. He has sought permission to appear by setting aside ex-parte order. Hence, he has prayed to allow the application.

3. Plaintiffs have given their say to this application and opposed it strongly. According to plaintiffs, this defendant always remains present in the Court. However he did not appear in the proceeding. The reasons given by this defendant are vague. Suit is posted for hearing. In last two years, in spite of sufficient opportunity this defendant did not appear. Hence they prayed to reject the application.

4. From the rival contentions of parties, following points arise for determination, to which I have recorded my findings for the reasons given below.

<u>Points</u>	<u>Findings</u>
1. Whether Ex-parte order passed against defendant no.03 be set aside ?	In the affirmative.
2. What order ?	As per final order.

REASONS

5. Perused the application and record of the suit. Ld. Advocate K. M. Pawar for defendant no.03 submitted that, this defendant did not get necessary documents in time then after he took ill. So he could not

remain present in the Court. Now defendant no.03 wants to appear and file his written statement. So In the interest of justice ex-parte order against defendant no.03 may be set aside.

6. On the other hand, learned advocate S. S. Kale submitted that, this defendant was always present in Court premises. However he did not appear in the proceeding. He has willfully tried to prolong the case. He has caused delay of two years. For these reasons he prayed to reject the application.

7. On perusal of record, report of summons at Exh. 13 shows that, the suit summons was duly served with defendant no.3 on 11.01.2017. In spite of that, he did not appear hence ex-parte order was passed against him on 20.03.2017. Now he has appeared. He wants to file his written statement in the suit. It is seen that the reason mentioned in the application is not supported by documentary evidence. Significant fact is that plaintiffs have not admitted that settlement talks were going on in between them. So there is nothing on record to believe the story of this defendant.

8. However, the dispute between the parties needs to be resolved on merit. Every party must be given an opportunity of fair trial. Refusal to permit this defendant to appear will amount to denial of justice and it will create multiplicity of proceedings. For proper adjudication of the dispute, presence of defendant in the proceeding is necessary. Hence in order to adjudicate the dispute once and for all, in the interest of justice the application deserve to be allowed. Accordingly point No. 1 is answered in the affirmative and in answer to point No. 2, following order is passed.

Order

1. Application at Exh. 38 is allowed.
2. Ex-parte order passed against defendant no.03 is set aside.
3. Defendant no.03 to pay costs of Rs.100/- (One Hundred) to each plaintiff.

Place : Mahad.
Dt. 06.03.2019.

(R.R. Patil)
Civil Judge (Jr. Dn.) Mahad