

Order below Exh. 44 in R.C.S. No. 81/2016

1. This is an application given by defendant no.01 for setting aside Ex-parte order.

2. According to defendant no.1, he did not get the summons and notice of the suit. The summons was sent by R.P.A.D. It was returned unclaimed. Hence, on 09.01.2018 ex-parte order was passed against him. In fact the building in which defendant No.1 was residing was given for development so defendant No.1 has shifted to another place. He had not refused to accept the summons. However, he came to know the pendency of the suit. So he wants to appear and defend the suit. 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 was in contact with defendant No.1. He was well aware of the suit. However he did not appear in the proceeding. The reasons given by this defendant are vague. Suit is posted for hearing. Affidavit of examination in chief of plaintiff. Defendant No.1 has intentionally delayed the suit. 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.01 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 A. A. Chandorkar for defendant no.01 submitted that, the building in which defendant No.1 was residing, was given for development so defendant No.1 has shifted to another place. He had not refused to accept the summons. That's why he could not remain present in the Court. Now defendant no.01 wants to appear and file his written statement. So In the interest of justice ex-parte order against defendant no.01 may be set aside.

6. On the other hand, learned advocate S. S. Kale submitted that, this defendant was aware of the suit. 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, it is seen that the envelop of summons at Exhibit 30 sent to defendant No.1 came back with and endorsement that defendant No.1 refused to accept the summons. He did not appear hence ex-parte order was passed against him on 09.01.2018. 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. 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. 44 is allowed.
2. Ex-parte order passed against defendant no.01 is set aside.
3. Defendant no.01 shall pay costs of Rs.100/- (One Hundred) to each plaintiff.

Place : Mahad.
Dt. 26.06.2019.

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