

ORDER BELOW EXH. 64 IN R. C.S. No. 13 of 2016

(Shri. Kashinath Sajana Bagave and others 2 V/s.

Shri. Vitthal Arjun bagave and others 18)

Perused the application.

2. Heard the argument of both side.

3. The defendant no. 2 has filed the present application to set aside exparty order passed against him on 03-08-16. Defendant no. 2 in his application contented that due to his illness he has not appeared, therefore exparty order passed against him. Hence to set aside the said exparty order, the present application is filed. The plaintiff filed his say on the said application and averse that there is no reasonable ground for not appearance is given. The reason of illness for the period of 2 years, for not appearance before the court is not supported with any document evidence. Therefore application is liable to rejected.

4. In order to decide the suit on merit, it is necessary to give opportunity to defendant no. 2 to appear and contest the suit. The application is supported with the affidavit. If the application is rejected defendant no. 2 will suffer irreparable loss and remained unheard. It is also important to note that if the application is allowed and suit is contested, it will be helpful to decide the suit on merit. No loss caused to the plaintiff if the opportunity is given to the defendant to contest.

5. Non-appearance for the period of 2 years due to the illness is not satisfactory as it is not supported with any documentary evidence. The exparty order is passed on 03-08-16. But though the reason is not supported with the document evidence, it is not satisfactory and believable. As the suit is kept for final argument and the evidence of the said defendant is closed, but it appears to me that opportunity of the appearance is to be given by imposing some cost on defendant no. 2. Therefore in order decide the suit on merit I pass following order :

ORDER

1. The application is allowed subject to the costs of Rs. 500/- to be paid to the plaintiff by defendant no. 2.
2. Exparty order and evidence closed order passed against defendant no. 2 is set aside.
3. Costs is the condition president for the proceeding of the suit.

Date - 10/10/2018.

(V. A. Jadhav)
2nd Jt. Civil Judge J.D., Chiplun

- : C E R T I F I C A T E : -

Judgment/order in (Order below Exh.64 in R.C.S. no.13/2016)

I affirm that the contents of this Pdf file order are same word as per original order.

Name of Stenographer	:- S.S.Sane
Court Name	:- The Court of 2 nd Jt. Civil Judge J.D. and Judicial Magistrate F.C., Chiplun
Date of decision	:- 10/10/2018
Judgment signed by PO. on	:- 10/10/2018
Judgment uploaded on	:- 11/10/2018