

Order below Exh.82 in R.C.S. No.13/2016

(Kashinath Sajana Bagave and other-1 Vs.
Vitthal Arjun Bagave and other-17)
(CNR No.MHRT070001282016)

Perused the application, say and documents on record.

2. Heard the argument of both sides.

3. Defendant no.1 has filed the present application to set aside no W.S. order passed against him. On 3/08/2016 no W.S. order passed against defendant no.1. To set aside the said order the present application is filed.

4. The plaintiff filed his say and averse that the defendant has not filed his W.S. within the period of 90 days. The reason given in the application that, from February-2016 to 2020 the defendant has not get the documents is not believable. If the application is allowed, it will affect the right of the plaintiff.

5. In order to decide the suit on merits, it is necessary to give opportunity to the defendant to file his W.S. The application is supported with affidavit. If the W.S. of the defendant has not come on the record, then the defendant will remained unheard. The defendant will suffer irreparable loss. The defendant will not get his right to defence if the application is rejected. The Hon'ble Apex Court also laid down that the Court should take liberal view while setting aside no W.S. order if sufficient reason is shown. The reason mentioned in the application is not satisfactory. The no W.S. order is passed against defendant no.1 on 3/08/2016. Till today the defendant has not taken any effort to set aside the said order. The reason for the delay is not mentioned in the application. It is also important to note that the evidence of the plaintiff and defendant is closed and the matter is kept for the final argument. Considering all these

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facts, it is necessary to impose some costs to the defendant. Hence in order decide to suit on merits, I pass following order : -

ORDER

1. The application is allowed.
2. No W.S. order passed against defendant is hereby set aside subject to the costs of Rs.1000/- to be paid by defendant no.1 to the plaintiff on or before next date.

Date : - 26-02-2020

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