



CNR No. MHSI070001392022

**Order passed below Exh. No.49  
(I.A. No.1/2023)in R.C.S. No.32/2022**

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The present application is filed by the defendant no. 3 to set aside exparte order dated 07/11/2022.

2. The defendant no. 3 has contended that, he is having age of 84 years. He is suffering from various ailments. He cannot walk alone without the assistance. Due to his old age, he is forget to remain present into the court. Consequently, exparte order was passed against him. The valuable rights of the defendant no. 3 is involved in the present suit. If the exparte order is not set aside, it will cause hardship to the defendant no.3. Therefore, prayed to allow the application and set aside exparte order passed against defendant no.3. The plaintiff has resisted the application by filing say on overleaf of the application. It is contended that no evidence is produced in support of the reasons assigned. Therefore, prayed to reject the application.

3. Heard Both the sides. Both the parties have reiterated the contentions of application and say. Perused the record. The record shows that suit summons was served to the defendant no.3. However, the defendant no.3 has not appeared before the court nor filed his written statement. Therefore, on 07/11/2022 I have passed exparte order against the defendant no.3. The defendant no.3 has assigned reason for delay that due

to his old age, he forget to remain present in the court. The application is supported with the affidavit of defendant no.3. The defendant no.3 has assigned sufficient reason for his absence.

4. Moreover, the present suit is filed for partition and separate possession of the share. The valuable rights of the parties are involved in the present case. The present suit is pertaining to the immovable property. Therefore, in order to arrive at just decision of the case, it would be just and proper to grant an opportunity to the defendant no.3 to put up his case. Therefore, it would be just and proper by imposing Costs upon the defendant no.3 to set aside exparte order passed against him and allow him to file written statement. In the cumulative, I pass following order.

### ORDER

1. The application at Exh.49 is hereby allowed and order dated 07/11/2022 is hereby set aside in respect of defendant no.3 on payment of Costs of Rs.200/- (Rupees Two Hundred Only).
2. The Costs amount be paid by the defendant no.3 to the plaintiff.

(Pronounced and dictated in open Court.)

Place - Malvan  
Date - 15/02/2023

Mahesh R. Devkate  
Jt. Civil Judge Jr.Dn., Malvan.