

R.C.S.No. 73/2012
Mahadev Kadam Vs. Vilas Kadam & Ors.

Order below Exh. 91

The present application is filed by the defendant no. 1,3 & 5 for setting-aside No W.S. order passed against them.

2. Read the application. According to defendants due to illness of deft. no. 1 and 3 and as leave was not granted to the deft. no. 5 they were unable to file their written statement within limitation. They have not caused any deliberate delay. Hence No. W.S. order passed against them be set-aside. Say was not filed by plaintiff.

3. Perused record and proceeding. On perusal of record it appears that, No W.S. order was passed against deft. no. 1 & 5 on 12/06/2013 and against deft. no. 3 on 27/08/2013. Prior to that much opportunity was granted to the deft. no. 1,3 & 5 for filing of their written statement. They have filed present application on 21/12/2013 i.e. after five months of passing No W.S order against them. The defendants have claimed that, deft. no. 1 and 3 was under treatment at Mumbai due to viral fever and sever low backache respectively. In support of their contention they produced medical certificates on record. On perusal of said document its appears that, application is supported by documents. However as the suit is for partition and separate possession, it is necessary to allow the deft. no. 1, 3 & 5 to raise their defence. Moreover in order to give fair opportunity to raise their defence and to avoid the multiplicity of proceeding it would be just and proper to set-aside No W.S. order passed against deft.no. 1, 3 & 5 by imposing cost on them. Hence the following order.

- ORDER -

(1) Application is allowed subject to cost of Rs. 400/-. Out of which Rs. 200/- to be paid to the plaintiff and remaining be credited to Government.

- (2) Deft. no.1,3 & 5 to pay the cost on or before next date. If fails order stands vacated.
- (3) After depositing cost amount No W.S. order passed against deft. no. 1,3 & 5 be set-aside.
- (4) Cost in final cause.

Date :- 27/04/2016

(K.K.Mane)
Civil Judge (J.D.), Deogad.