

MHSN020004102019



Order Below Exh. 108 in Civil M.A No.32/2019
(Gabrial Namaji Mohite & Ors. Vs. Kondiba Subarao Awale & Ors.)

Perused application and say (Exh.111). Heard both learned advocates and gone through the record of proceeding.

2. Record shows that, original petition has been filed for restoring R.C.S.No.461/2014 vide Section 151 of the Code of Civil Procedure. Respondent No.4 appeared in the matter on 05/09/2019 but, failed to file say. Further, record shows that, still No-Say order has not been passed against him. Meantime on 31/10/2025 he submitted application (Exh.94) vide Order VII Rule 11 of the Code of Civil Procedure for rejection of main petition. To which the petitioner filed say on 23/12/2025. Said application has been decided on 11/02/2026. After rejection of said application respondent No. 4 changed his earlier advocate and moved application under consideration for setting aside 'No-Say' order.

3. In this backdrop present application has been moved. It is resisted by the petitioner on the ground of inordinate delay of seven years which is not satisfactorily explained. It is alleged by the petitioner that application has been moved for causing harassment of the petitioner and to prolong the matter. Further, in alternative petitioner prayed that if the court comes to the conclusion of allowing the application then heavy cost be imposed on respondent No.4

4. As mentioned earlier present main petition is for restoring R.C.S.No.461/2014. Though, respondent No.4 appeared but had not taken care to file say within time. So, already statutory period for filing say has been elapsed. Then he moved application for rejection of main petition. Said application is also rejected. As rightly pointed out by learned advocate for the petitioner no satisfactory reason has been given for inordinate and considerable delay in filing say within time. However, record further shows that, R.C.S.No.461/2014 was withdrawn by alleged power of attorney holder of the petitioners and other respondents and the petitioner are claiming that the fraud was played upon court. The matter is in respect of valuable immovable property. Therefore, if opportunity is granted to both parties to put up their defence then it will help the court to finally adjudicate the matter on merit.

5. Definitely, there is considerable delay on the part of respondent No.4 in filing written-statement. However, the procedural bottlenecks should not come in way of dispensation of the justice, when the other side can be very well compensated by imposing fine on the erring party. So considering this aspect, in my view application deserves to be allowed. Hence, I passed following order:-

ORDER

Application (Exh.108) is hereby allowed subject to cost of Rs.2000/-.

Date: 20/04/2026
Sangli.

(Vibha P. Gaikwad)
Jt. Civil Judge, Sr. Division, Sangli