

ORDER BELOW EXH.46 IN SPECIAL CIVIL SUIT NO.33/2019
(Sou.Radhabai Sadashiv Rasal and Ors Vs. Shri.Rajaram Mahadev
Yadav and Ors)
(CNR NO.MHSN05-002672-2019)

Present application is filed by defendant No.4(a) and 4(b) for setting aside *ex-parte* order passed against them.

2. According to defendants, due to illness, it could not possible to them to appoint advocate on their behalf and to attend the court and therefore, ex-parte order came to be passed against defendants. According to defendants, they are women and not having support of anybody and therefore, it could not be possible for them to collect the necessary documents and engage advocate on their behalf. According to defendants, they have not deliberately made the delay. According to defendants, they did not having any legal knowledge and therefore, it could not be possible for them to submit their written statement. Hence, it is prayed that, order ot ex-parte be set-aside and written statement along-with counter claim be taken on record.

3. Plaintiffs filed say at Exh.47 and objected the application. According to plaintiffs, contents of the application are false and frivolous and no any justifiable reason mentioned in the application. According to plaintiffs, contents of the application are totally contrary because, it is unbelievable that, both defendants suffering from illness at the same time. According to plaintiffs, summons served in the year 2022 and thereafter, after lapse of 1

year defendants not attended in the court and no any reason has been assigned for their absence. Hence, application be rejected. According to plaintiffs, merely to harass the plaintiffs, defendants are avoiding to attend the court. Hence, application be rejected and if, court is going to allow the application cost of Rs.1,000/- be imposed on said defendants.

4. Read the application and say. Heard. On perusal of Exh.01 it reveals that, order of ex-parte came to be passed against present defendants on 19.08.2022 and present application is filed on 18.10.2023. No-doubt, reasons given in the application are not justified. However, Considering nature of suit being suit for partition and perpetual injunction and further considering the principle of natural justice which requires that, no one should be condemned unheard and decision should not be reached behind their back and proceeding that affect property or personal rights should not continue in their absence and such persons should not be precluded from participating in the suit, I am of the view that, in the interest of justice and to avoid multiplicity of the proceeding, it is just and proper to condone the delay by imposing cost on defendants for such delay and amount of cost be paid to plaintiffs so as to compensate them for delay. One more factor that should be taken into consideration that this court is fact finding court and therefore presence of defendants would be helpful to adjudicate the matter on merits and to arrive at logical end. It is to be noted that, if application is rejected much prejudice would be caused to the defendants and it ultimately result in multiplicity of the proceeding

between the parties. On the contrary, if application is allowed, presence of defendants would be helpful to resolve all controversies between the parties. It also results in cost saving to parties and it also saves valuable time of the court. With above discussion, it is justifiable to allow the application by imposing cost of Rs.500/- each on present defendants for such inordinate delay and after payment of cost, same be paid to the plaintiffs so as to compensate them. In result, I proceed to pass the following order :-

=ORDER=

- 1) Application is allowed subject to payment of cost of Rs.500/- each (Rs. Five Hundred only) by present defendants to plaintiffs on or before next date.
- 2) After payment of cost as above, written statement/say of defendants will be taken on record.
- 3) Cost of present application is on present defendants.

Islampur.

Date : 18.10.2023

(Gautam S.Diwan)

**2nd Joint Civil Judge Senior Division,
Islampur.**

Name of Stenographer	:- Sachin B. Yadav, Stenographer-II
Name of Court	:- 2nd Joint Civil Judge (S.D.), Islampur.
Date of decision/typed	:- 18.10.2023.
Judgment/order signed by the P.O. on	:- 18.10.2023.
Judgment/order uploaded on	:- 18.10.2023.