

**Order below Ex. 28 in RCS 132/2020**  
**Akkatai Teli Vs Mallappa Teli & Ors**

The application is on behalf of defendant 1 seeking to set aside of ex-parte order.

2 Perused the application, say, and the record.

3 Heard both the sides.

4 The suit is for partition, and other consequential reliefs. The contesting defendant 1 failed to contest the proceeding resulting into the order. The stage in the matter is of evidence of the defendant, if any.

5 As a matter of fact and record, the stage has to be reversed from the stage of evidence of defendant 1 to the stage of filing of written statement. Defendant 1 has produced on record a copy of the power of attorney of the plaintiff and a photograph of defendant 1 who is paralyzed since 2020. A copy of the written statement has also been annexed.

6 The application is vehemently opposed on the ground that the order came to be passed on 22/02/2021. The matter has reached to stage of hearing and therefore, the application is opposed and if to be allowed costs of Rs.5000/- be imposed.

7 As a matter of fact and record, despite the suit being proceeded, has not culminated. On perusal of the photograph, it is prima facie, clear that the defendant 1 is paralytic and unable to move. The very filing the power of attorney may suggest the same. The disposal on merits is a rule. The application is supported by affidavit. The inconvenience caused to the other side may be remedied. The defendant 1 has to be granted a final opportunity to conduct the proceeding with due diligence. Costs follows the event. Hence, the the following **Order**

The application is allowed subject to costs of Rs.100/- payable to the other side forthwith.

2 On due compliance written statement be taken on the record.

Jath  
Date:- 13/02/2026

( Sanjay P Bunde)  
Jt C.J.J.D, Jath