

MHSN090007632020



Order below Exh.19 in R.C.S.No.65/2020

[Vilas Rajaram Kolekar v/s. Vasant Nivrutti Kolekar & Ors.]

The present application is filed by defendant no.1 and 2 for setting aside No.W.S. and No say order passed against them.

2. By filing present application it is submitted by the defendants that, meanwhile, the defendant no.1 due to his old age was not feeling well and he had to visit the doctors regularly. The defendant no.2 is a purchaser of the suit property and as the defendant no.1 was not feeling well he could not get the necessary information, therefore, the could not file written-statement as well as to application at Exh.5 within the stipulated period. It is further submitted that if, the said order is set aside it will not cause any prejudice to the plaintiff. On the other hand, if the said order is not set aside, they will suffer irreparable loss which cannot compensated in terms of money. Therefore, they prayed that, considering the nature of the suit, the No.W.S. order passed against them may be set aside.

3. On the other hand the Ld.Advocate for the plaintiff filed his say and denied the contents of the application. He further submitted that, the suit summons is duly served to the defendants on 26.02.2021. The defendants intentionally did not file their written-statement as well as say. The defendants have not filed documentary evidence in support of their application, therefore,

application may be rejected. Alternatively it is prayed that if Court comes to conclusion to allow the present application, then the application may be allowed by imposing heavy costs.

4. Heard both sides. Perused record. After perusal of record it is seen that, the present suit is filed for declaration of right as to preemption and for perpetual injunction. The record shows that No.W.S. order and No say passed against the present defendants on 05.01.2022. Considering the nature of suit, I am of the opinion that, it is necessary to give an opportunity to the defendants to file their written statement and say on temporary injunction application in order to contest the suit and for that purpose it is necessary to allow the present application. While allowing the present application it is taken into consideration that No.W.S. and No say order passed against them on 05.01.2022. Thereafter, they have filed present application on 03.02.2023. Hence, considering these reasons, I proceed to pass following order.

ORDER

1. Application is allowed.
2. No.W.S. and No say order passed against defendant no.1 and 2 dated 05.01.2022 is hereby set aside subject to costs of Rs.500/- (Rs.Five Hundred Only).
3. Out of amount of costs, Rs.100/- (Rs. One Hundred) be given to the plaintiff and the remaining amount of Rs.400/- (Rs.Four Hundred Only) be credited to the Government.

TASGAON.
Date : 21.03.2023

(Omprakash M.Mali)
Civil Judge Jr.Dn.,
TASGAON.

I affirm that, the contents of this P.D.F. file are same, word to word, as per the original order.

Name of the Stenographer : U.P.Patil
Court : Civil Judge Jr.Dn. and
Judicial Magistrate F.C.,
Tasgaon.
Date : 21.03.2023
Order signed by the Presiding : 21.03.2023
officer on
Order uploaded on : 21.03.2023