



**ORDER BELOW THE APPLICATION (EXHIBIT 11) IN THE  
MISCELLANEOUS CIVIL APPEAL NO. 3/2023  
(BALASAHEB & OTHS. VS. MORESHWAR)  
(PASSED ON : 16/10/2023)**

**Nature of the Application.**

1. This is an application filed by the respondent to set-aside exparte order passed against him.

**Contents in the Application.**

2. The respondent has contended that due to illness and domestic reason he failed to appear. Therefore, in the interest of justice exparte order is required to be set-aside.
3. On these grounds the respondent has prayed to grant the application.

**No Say of the Appellants.**

4. The appellants have failed to file their say.
5. Hence, the application proceeded without say of the applicants.

**The Argument.**

6. I have heard advocate for the respondent, at length and advocate for the appellants, on law point only.
7. They argued in consonance with their contention in the application and say. I will deal with those at the time of discussing the points taken for consideration.

**Points and Findings.**

8. Upon hearing, the following points arise for my

consideration and I record my findings thereon as under for the reasons to follow :-

|    | Points                                                                            | Findings                                    |
|----|-----------------------------------------------------------------------------------|---------------------------------------------|
| 1) | Can the exparte order passed against the respondent be set-aside, as prayed for ? | Yes.                                        |
| 2) | What order ?                                                                      | Application granted.<br>As per final order. |

**Reasons as to Point Nos. 1 and 2.**

9. The respondent though served has failed to appear. Hence, the appeal proceeded exparte against the respondent.

10. The appellants have filed this miscellaneous appeal in the year 2023.

11. It is well settled principle in law that too technical or pedantic approach in cases of permitting any party to file written statement even at late stage is not called for. The Court have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having his determined on merits unless he has, by gross negligence, deliberate inaction, or something akin to misconduct, dis-entitled itself from seeking the indulgence of the Court.

12. It is now well established by the decisions of the Hon'ble Supreme Court as well as by the Hon'ble Bombay High court reported in Shaikh Salim Haji Abdul Khayumsab V/s. Kumar & others, 2005 A.I.R. SCW 6031 and Anil Kushabrao Phutane V/s. Madhukar Kushabrao Phutane and others, 2006(1) Mh. L.J. 369, that the court can permit filing of the say beyond 90 days if a case to that effect is made out.

13. In my view, considering the nature of the appeal it is necessary in the interest of justice to set-aside exparte order passed against the respondent.

14. Further, if the respondent is allowed to appear, the matter can be decided on merits and it will help to avoid multiplicity of proceeding. Therefore, also exparte order passed against the respondent is required to be set-aside.

15. According to the respondent, it is necessary to appear, in my view, considering the nature of the appeal and the dispute involved an opportunity is required to be given to the respondent to appear, which will help to arrive at proper conclusion.

16. Above all, if the application is allowed no harm or injustice will be caused to the appellants but it will help to decide the appeal on merit. Therefore, keeping in mind the legal principles supra, I am inclined to give an opportunity to the respondent to appear.

17. After giving thoughtful consideration to the facts of the case and the averments made by the respondent in this application I am of the considered view that for just decision of this appeal it is necessary to give an opportunity to the respondent to appear in order to find out the truth in the allegations made by the appellants.

18. I am unable to persuade myself with the arguments advanced on behalf of the appellants that the application is not tenable, for the simple reason that a litigant ought not to be denied an opportunity of having his determined on merits and my findings, supra.

19. In short, relying on the principles discussed, supra and the facts and circumstances of the case, I am inclined to grant this application and allow the respondent to appear.

20. However, due to inability of the respondent to appear

within time prescribed by law the appellants have unnecessarily suffered and for no fault of them, it is the appellants who shall suffer real prejudice. Therefore, I am of the view that the appellants need to be compensated reasonably by awarding suitable costs. The State i.e. the Taluka Legal Services Authority Pandharpur is also entitled to share the cost amount as directed from time to time by the Hon'ble Supreme Court and the Honb'le High Court. The cost is quantified at Rs. 500/- (Rs. Five Hundred only) considering the nature of the appeal, delay caused and the overall conduct of the respondent.

21. Accordingly, I answer Point No. 1 in the affirmative and Point No. 2 as application granted as per final order.

22. In the result the following order.

**ORDER.**

|    |                                                                                                                                                                                                                                                                                                                           |                                                  |                                             |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|---------------------------------------------|
| 1. | The application seeking setting aside the order of "exparte" passed against the respondent is allowed and the "exparte" order is set aside subject to costs of Rs. 500/- (Rs. Five Hundred only) to be deposited in the Court on or before 25/10/2023, failing which the application shall stand rejected, automatically. |                                                  |                                             |
| 2. | The cost awarded shall be apportioned as herein below :-                                                                                                                                                                                                                                                                  |                                                  |                                             |
|    | a)                                                                                                                                                                                                                                                                                                                        | The appellants.                                  | Rs. 450/-<br>(Rs. Four Hundred Fifty only). |
|    | b)                                                                                                                                                                                                                                                                                                                        | The Taluka Legal Services Authority, Pandharpur. | Rs. 50/-<br>(Rs. Fifty only).               |

(Pronounced in the Open Court).

Date : 16/10/2023

(M. B. Lambe),  
District Judge-1,  
Pandharpur.

**C E R T I F I C A T E**

I affirm that the contents of this PDF file Judgment is same word to word as per the original Judgment.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,  
District Judge – 1 &  
Addl. Sessions Judge, Pandharpur.
- (c) Judgment signed by P.O. on : 16/10/2023
- (d) Judgment uploaded on : 17/10/2023