

ORDER BELOW EXH.25

(Passed on 14/11/2022)

The defendant has filed this application vide Order IX Rule 7 of the CPC, to set aside the exparte order passed against him.

2. He has submitted that, the suit was proceeded exparte vide order dated 04/02/2021. The application below Exh. 05 was proceeded exparte vide order dated 20/12/2021. The summons was served to the defendant on 8/10/2020, when the covid-19 pandemic was exists. The defendant suffered form covid-19 disease. Vide Suo moto writ petition, the limitation period was excluded till 03/10/2021. The defendant, on the advice of earlier Advocate that, the suit was not tenable and he did not require to remain present in the court, remained under bonafide impression that the suit is not tenable. Hence, the delay caused to appear and file the written statement within stipulated period. This mistake of facts is sufficient cause which prevented the defendant from appearing in the suit. As soon as the defendant acknowledged about the fact of exparte injunction against him, he approached the court with due diligence. The defendant being common citizen, in unaware about the legal facts. Thus, considering these reasons, he prayed to set aside the exparte order passed against him.
3. Plaintiffs have filed their say to this application vide Exh.29. they submitted that, all the reasons mentioned in the application are not true and correct. The defendant deliberately avoided to remain present in the court. No document has been filed on record to support the contentions. After the pandemic covid-19, the regular

court function was started. The case has been listed for examination of the plaintiff's witness. Hence, the application is liable to be rejected or in the alternative to allow on imposing costs upto 10,000/- on the defendant.

4. Heard Ld. Advocates for both the parties. Perused the record and roznama. It shows that, the summons was duly served on the defendant vide balliff report dated 08/10/2020 at Exh. 09 The exparte order was passed against the defendant on 04/02/2021. However, vide the Suo Moto Writ Petition No. 03/2020, the period of limitation was excluded from 15/03/2020 to 28/02/2022. Thus, it appears that, the defendant is entitled to claim the exclusion of limitation period.
5. However, the defendant has specifically submitted that on the advice of his earlier Ld. Advocate, he avoided to remain present in the suit. Accordingly, inaction of the lawyer can be considered to condone the delay caused and due to which party would not suffer. However, in order to support this contention, the defendant except with the affidavit has not filed on record any supporting evidence. Furthermore, the defendant has submitted that, he was suffering from covid-19 pandemic, due to which the alleged delay has been caused. To support this, he has filed on record, the test report at Exh.32. it shows that, the defendant was suffering from covid-19 on or about 23/04/2021. However, it seems that, the exparte order has been passed already i.e., on 04/02/2021. Further, plaintiffs have filed on record the document vide list Exh.34, which shows that, plaintiffs were also suffered from covid-

19 disease on or about 21/06/2021. Ld. Advocate for the plaintiff has submitted that, even after sufferance from the covid-19, the plaintiff approached the court after the treatment and proceeded with the suit.

6. Further he submitted that, he approached the court when he acknowledged about the fact of exparte injunction order against him. It appears that, the alleged exparte injunction order has been passed on 20/12/2021. The defendant has appeared in the suit on 04/07/2022. Till then, he has not explained the cause for delay to appear in the suit and to take necessary steps since, 01/03/2022 i.e, from when the excluded limitation period has been expired. Hence, the contentions of the defendant as to sufferance from covid-19 not gives much importance. Further, the documents at list Exh.34 shows that, plaintiffs were also suffered from the covid-19, yet after the treatment, they have proceeded with the suit. It is pertinent to mention that, the Ld. Advocate for the defendant has submitted that, there are other litigations pending between the parties. Hence, it would not be proper to assume the fact that the defendant is unaware about the legal facts.
7. Thus, it is clear that, the defendant is entitled to claim the exclusion period till 28/02/2022. Hence, it has to say that, the defendant has assigned good cause for his previous non-appearance in view of the terms of O. IX R. 7 of the CPC. However, he has not shown his bonafideness after the lapse of that period. He has not brought any material on record to show that, when he got the knowledge about the passing of exparte injunction order.

Nevertheless, the instant suit is filed for the relief of partition and separate possession. In such circumstance, the defendant must be given the fair opportunity to put up his defence and to counter the suit. Therefore, taking into account all this aspect, in the interest of justice and for adjudication of the dispute fairly and by giving reasonable chance to the defendant, it is necessary to set aside the ex parte order passed against him below Exh.01. however, it is necessary to impose costs on the defendant in order to saddle the delay caused to plaintiffs to proceed with the suit as the case has been adjourned for recording of the evidence of plaintiff's witnesses since 04/07/2022. The defendant has filed copy of written statement along with this application, which shows his bonafideness to proceed with this suit. Consequently, it would be apposite to impose costs of Rs. 500/- on the defendant. Resultantly, following is the order –

Order

1. The application at Exh.25 is allowed, subject to costs of Rs. 500/- to be paid by the defendant to plaintiff no.1 to 3 in common on or before next date.
2. Ex parte order passed against the defendant would be set aside after compliance as to costs.
3. The written statement of the defendant would be taken on record after compliance as to costs vide order below Exh.25 and 23.
4. On failure to pay costs on or before next date, this order would be vacated.
5. Both the parties and their Ld. Advocated to take note accordingly.

Place – Pandharpur.

Date – 14/11/2022

(Sonal A. Salunkhe)

5th Jt. Civil Judge, J. D., Pandharpur.