


MHSO070003392010 	<b><u>COMMON ORDER ON EXH. 32 &amp; 68</u></b> <b><u>IN R.D.No. 27/2010</u></b> <b><u>(Passed on 04<sup>th</sup> September 2025)</u></b>
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1. Application at Exh.32 was filed by JD No. 1 and 2 to set-aside no say order passed against them. However, when new Advocate appeared for JD, they filed separate application for JD No. 1 vide Exh.68 to set-aside ex-parte order against JD No. 1. DH has filed say at Exh.36 and 70 respectively to both these applications. Heard Advocates for both sides. Perused the record.

2. It is submitted by the JD No. 1 and 2 that original suit R.C.S.No.06/2004 was tried without written statement of these JD. Meanwhile, villagers have settled the dispute between the plaintiffs and defendants. Therefore, they were under impression that there are no litigation pending in the court between them. Defendant was living separately since six years and his brother is illiterate, therefore, they could not gather the information and appeared in the petition. While filing of application Exh.68 it is stated that inadvertently, though order of ex-parte was passed against JD No. 1, the application vide Exh.32 was filed jointly by JD No. 1 and 2. It is prayed that in order to avoid further injustice to JD No.1, adverse order passed against him should be set-aside.

3. The DH has objected both applications. He has denied that any compromise talks were conducted between them. They had filed appeal with delay condonation application. However, they

have not prosecuted appeal and it got dismissed. Present applications are filed to protract the proceeding. DH is seeking relief since the year 2010. He could not enjoy fruits of decree for last 15 years. Possession warrant has been issued multiple times but JD opposed the execution. Therefore, JD have knowledge about pendency of execution petition. In spite of this, these applications are filed belatedly. Hence, he prayed to reject both applications.

4. The decree passed in favour of plaintiff is of injunction and removal of encroachment and giving possession to the decree holder from defendants. However, though the decree has been passed in the year 2009 and petition is pending since 2010, the DH has unable to receive fruits of decree. Though the notice was received by JD No. 1 and 2, they failed to appear. JD No.2 appeared but, failed to file say. Thus, no say order was passed against JD No.2 and ex-parte order was passed against JD No.1 on 19.08.2011. The application at Exh.32 is filed on 24.06.2013. Meanwhile, possession warrant vide Exh.14 was issued and could not be executed due to standing crop. JD No. 1 and 2 have caused huge delay in filing application. They had been served prior to 17.06.2011. JD No.2 appeared on 17.06.2011 vide Exh.09. However, present application at Exh.32 was filed after lapse of two years on 24.06.2013.

5. Considering all these facts JD No. 1 and 2 have caused enormous delay to prosecute the present case. In spite of filing of application at Exh.32, it was not prosecuted till today. Thus, it

appears that JD No. 1 and 2 have malafied intention to protract the proceeding. The decree has been passed for possession of encroached area by removing encroachment of JD. Therefore, if they are given opportunity to contest the petition, further multiplicity of the proceeding will be avoided and DH will get relief sooner. Therefore, in the interest of justice and to decide the petition on merit, it will be appropriate to give opportunity to JD No. 1 and 2. However, they have caused delay of more than two years in filing application at Exh.32 and delay of 14 years in filing application at Exh.68. Therefore, this delay needs to be compensated in terms of costs. For the reasons mentioned above following order is passed.

### ORDER

1. The application (Exh.32) is allowed and order of No say passed against JD No.2 is set-aside subject to costs Rs.2,000/- (Two thousand only) payable to the DH on or before next date.
2. The application (Exh.68) is allowed and order of ex-parte passed against JD No.1 is set-aside subject to costs Rs. 5,000/- (Five thousand only) payable to the DH on or before next date.
3. After the cost is deposited, say filed by JD No.1 and 2 will be taken on record.

**Pandharpur.**  
Date : 04.09.2025.

**(Smt. S.S.Raul)**  
Jt. Civil Judge, Junior Division,  
Pandharpur, Dist.- Solapur.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer	:-	D.S.Landage (Grade-III)
Court	:-	Jt. Civil Court,J.D., Pandharpur.
Date	:-	04.09.2025.
Judgment/Order signed by the Presiding Officer	:-	04.09.2025.
Judgment/Order uploaded on	:-	04.09.2025.