

**ORDER ON EXH. 28 IN RCS.No. 60/2021**  
**(Kashinath Rathod Vs. Gulchand More & others)**  
**(Passed on 08<sup>th</sup> September 2022)**

1. With instant application the defendant Nos. 1 and 3 prayed to set-aside No WS order passed against them and the defendant No.2 prayed to set-aside ex-parte order passed against her.

2. According to the defendants, the defendant No.2 is old age widow and lives at Mandrup. Due to her physical condition she cannot appear in the Court on fixed date therefore, she has not filed her say and written statement. Furthermore, the defendant Nos. 1 and 3 are belonged to the family of farmer and they have not get the information and documents in respect of the suit property within time and in meantime the ex-parte and No say order passed against them. Moreover, the rights of the defendants are involved in the suit property. However, as per the principles of natural justice other side has to be heard. Moreover, if permission is not given to file their WS and say then it will cause heavy irreparable loss to them. Hence, the defendants prayed for allowing the present application.

3. In pursuance to the said application say on behalf of the plaintiff was called. Accordingly, the plaintiff has filed his say vide Exh.30. He has opposed the present application and contended that, the contents of the present application are false and the defendants intentionally delayed for filling the written statement and say.

4. Heard both sides. Perused the record. The suit is for declaration. Moreover, admittedly the defendants have not filed their say and written statement on record. However, the defendant Nos. 1 and 3 are claiming to set-aside No WS order passed against them as

well as the defendant No.1 prayed to set-aside ex-parte order passed against her.

5. The present matter is pending for argument on Exh.5. Thereafter, the present application is moved. It is contention of the defendants that, the defendant No.2 is old age widow and the defendant Nos. 1 and 3 belonged to the family of the farmer and they have not get the documents within time. The defendant No.1 has filed an affidavit in support of the present application. Moreover, as per the principles of natural justice other side has to be heard. Further, the plaintiff has objected the present application on the ground that, the contents in the present application are false and they intentionally delayed in filling W.S. and say. However, there is nothing on record to show that, the contention of defendants is false.

6. Considering the nature of the suit, it will just and proper to give an opportunity to the defendants in the interest of justice. Hence, definitely the plaintiff has suffered due to delay in the present matter. However, the plaintiff can be compensated for the said delay. Therefore, considering all above facts and circumstances, I pass the following order.

### **ORDER**

- 1) The application is allowed in following terms.
- 2) The No WS order passed against the defendant Nos. 1 and 3 and ex-parte order passed against the defendant No.2 is hereby set-aside subject to costs of Rs.300/- (Three hundred only) to be paid to the plaintiff immediately.

Date:-08.09.2022.

(R.M.Shaikh)  
Jt. Civil Judge Junior Division,  
Akkalkot.



## Certificate

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

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|---------------------------------------------------|----|------------------------------------------|
| Name of Stenographer                              | :- | D.S.Landage (Grade-III)                  |
| Court                                             | :- | J.M.F.C.& Jt. Civil Court,J.D.,Akkalkot. |
| Date                                              | :- | 08.09.2022.                              |
| Judgment/Order signed by<br>the Presiding Officer | :- | 08.09.2022.                              |
| Judgment/Order uploaded on                        | :- | 08.09.2022.                              |