

Order below Exh.29 in R.C.A.No. 201 of 2017.
(CNR No.MHST01-001803-2017)

This is an application filed by the respondent No.3 for setting aside exparte order.

02] According to the applicant, there was cateract operation of respondent No.3. He is 75 years old. His wife is also 70 years old. Their son is residing at Mumbai. Thus, there is nobody to lookafter them. Therefore they could not contact the Advocate. Meanwhile on 20/12/2017 exparte order is passed against respondent No.3. Subsequently on 18/06/2018 through oversight, without setting aside exparte order V.P. is filed on behalf of respondent No.3. Thereafter the respondent No.3 suffered paralysis attack, therefore he could not contact the Advocate. Lastly it is prayed that the application be allowed and respondent No.3 be permitted to file say on Exh.7 and 27.

03] The application is resisted by the appellant by filing say at Exh.30. He has denied the grounds for not appearing before the Court. According to him, the right which are accrued in favour of the appellant can not be taken away. The respondent No.3 is negligent. Hence, it is prayed that application be rejected with costs.

04] Heard Advocate for both the parties. Both of them submitted as per their contention. The application is supported with medical certificate and affidavit. Apart from the medical

certificate, considering the age of respondent No.3 , this Court is of the opinion that there was sufficient ground for not attending the Court to the respondent No.3. Considering the principles of natural justice, a fair opportunity has to be given to defend the appeal. The appellant can be compensated by imposing costs on the applicant / respondent No.3 for causing delay. Hence , I pass the following order.

ORDER

- 1) The application is allowed subject to costs of Rs.500/-.
- 2) If the respondent No.3 fails to pay the amount of costs till next date, this order shall stand vacated automatically.

(Dictated and pronounced in open Court.)

Satara.

Date: 03/08/2019.

(S.R.Pawar)

District Judge-5, Satara.