

MHST070000381996



**Order Below Exh. 192 in RCS No. 438/1996
(Dattatray Vithoba Kharade Vs. Shivaji Baburao Salunkhe)**

1. The defendant has filed this application for setting aside No say order passed against him on commission report below Exh. 174. It is contended that, there is long litigation between the parties which was contested up to Hon'ble High Court. After decision of the Hon'ble High Court commission was appointed. Earlier defendant were represented by other advocate who did not communicated details of the case to the defendant. During the pendency of the suit matter was pending for bringing LRs of deceased defendant No. 2. Therefore, delay is not intentionally caused for filing say on court commission. Say of the defendant is necessary for adjudication of the suit. Therefore, defendants prayed to set aside No say order passed against him on commission report.

2. The plaintiff opposed the application by filing his say. It is contended that, there is a delay of more than 3 year. The plaintiff is old age person who remained present on each date.

Contenting all theses the plaintiff prayed to reject the application or impose costs of Rs. 5000/-.

3. Heard both sides.

4. Perused the record. Record shows that this Court passed no say order dated 05/09/2024 below Court commission report (Exh. 174). It is the submission of learned counsel for the defendant that, earlier defendant were represented by other advocate who did not communicated details of the case to the defendant. During the pendency of the suit matter was pending for bringing LRs of deceased defendant No. 2. Record shows that, Vakalatnama of new advocate on behalf the defendant No. 1 is filed on 31/07/2025 and thereafter this application is filed. Therefore, there is no reason do disbelieve submission advanced on behalf of the defendant. Right of immovable property are in question. Therefore, in order to give opportunity to the defendant to put his case and in the interest of justice the application deserves to be allowed. Learned counsel for the plaintiff prayed for costs of Rs. 5,000/-. However, record shows that, the matter was pending for bringing the LRs of deceased defendant No. 2 on record. Therefore, the matter was unready for further hearing. Hence, considering the facts and

circumstances of the case and reason for delay, I am not inclined to impose costs on the defendant. In the result, I pass the following order.

ORDER

1. The application (Exh. 192) is allowed.
2. No say order passed against defendant on commission report is hereby set aside.
3. Say of the defendant be taken on record.

Date : 14/11/2025

(Prashant P. Kulkarni)
4th Jt. Civil Judge, Junior
Division, Karad.