

ORDER BELOW EXH.39 IN R.C.S. NO. 308/2024

(Sharad Shivaji Jadhav Vs. Iyyaj Riyaj Shaikh and ors.)

The defendant No. 1 has moved the present application seeking a relief for setting aside No W.S. order. He has contended that the suit is for specific performance, in present suit he has appear thereafter he could not get the necessary documents and so could not filed his written statement in stipulated time. It is further contended that the delay is not intentional and for complete adjudication of dispute the defendant has to be permitted to file his W.S. Hence, he prayed to allow the application.

2. The plaintiff has filed say below Exh. 43 and denied the entire contentions. Per contra, contended that, the application is not legal and proper, it is moved only with intent to prolong the matter. It is also contended that the reason given is not proper. Further the defendant no. 1 has not filed the W.S. within stipulated period and hence necessary order is passed. Further the plaintiff had also given a details regarding the dates of case and after perusing the same it reveals that the defendant no. 1 was duly served and had appeared on 04/02/2025. Further record shows that on 08/04/2025 no W.S. order was passed. Further from the case details it is evident that thereafter the plaintiff has adduced evidence, no cross order was passed and thereafter the present application is moved.

3. The plaintiff has also contended that the defendants are residing in Phaltan city and had every knowledge regarding the present matter but have intentionally not appeared, have prolong the matter. Considering all above aspects he prayed for rejection of

application.

4. Perused the record, it reveals that, the present suit is for specific performance of contract and involves immovable property. Further from the record it appears that the defendant no.1 was duly served and appeared on 04/02/2025 but thereafter he has not filed his W.S. within stipulated period. Further from the record it is evident that on 08/04/2025 no W.S. order is passed against the defendant no. 1. In present matter record shows that the defendant no. 2 and 3 were also duly served but failed to appeared and hence ex-parte order is passed. Further record shows that in present matter the plaintiff has adduced his evidence by way of examination of chief on 26/02/2026, thereafter no cross order is passed.

5. The defendant no. 1 by way of present application is contending that for want of necessary documents he could not file the W.S. the Ld. Advocate for the plaintiff has relied upon a ruling in the case of M/s. SCG contracts India private Ltd. Vs. K. S. Chamankar infrastructure private Ltd. and ors. I have gone through said ruling it appears that the said ruling is on the point of res-judicata. In present matter the suit is for specific performance of contract though the reason given in the application does not seems to be sound one but still considering nature of the dispute, I hold that to decide the matter on its own merits the defendant No.1 has to be granted an opportunity to participate in the present proceedings. This will not cause any serious prejudice to the plaintiff. Further for the delay plaintiff can very well compensated by imposing heavy cost upon the defendant no.1. Considering all above things I hold that application has to be allowed, hence,

following order.

ORDER

1. Application is allowed.
2. The No. W.S. order is hereby set aside subject to cost of Rs. 1000/- payable to plaintiff.
3. The defendant no.1 is permitted to file his W.S.
4. Parties are directed to expedite the matter.

Date: 24/07/2026

Place – Phaltan

(V. S. Wagh)

2nd Jt. Civil Judge Jr. Division,
Phaltan, Dist. Satara.