

ORDER BELOW EXH.41 IN R.C.S. NO. 308/2024

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

The defendant No.3 and 4 have moved the present application for setting aside the ex-parte order.

2. The defendants have contended that in the present matter they could not remain present in the court. Accordingly ex-parte order passed against them. They have also contended that in present matter they have not intentionally remain absent. Further it is contended that the defendant no 3 is a senior citizen having a illness of diabetics, B.P. Further due to her illness he could not triable and so could not remain present. It is also contended that these defendants for want of necessary information and legal advice could not remain present. Further if ex-parte order is not set aside then defendants will suffer irreparable loss. Considering all above aspects they prayed to allow the application.

3. 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. 2 and 3 though duly served have not appears and hence ex-parte order was passed against them. Further the plaintiff had also given a details regarding the dates of case and after perusing the same it reveals that the defendant no. 2 and 3 were duly served by RPAD. 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.

4. 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.

5. 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.2 and 3 were duly served but failed to appear and on 08/08/2025 ex-parte order was 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.

6. In present matter the suit is for specific performance of contract. Record shows that the defendants has moved the present application after period of 8 to 10 months. From the record it seems that the defendant no. 3 is a senior citizen.

7. Considering the reasons mention, nature of the dispute, I hold that to decide the matter on its own merits the defendant No.2 and 3 have 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 cost upon defendant No. 2 and 3. Considering all above aspects I hold that application has to be allowed and hence, following order.

ORDER

1. The application is allowed subject to costs of Rs.1500/- payable to the plaintiff.
2. The ex-parte order dated 08/08/2025 is hereby set aside and the defendant no.2 and 3 are permitted to file their written statement / say.
3. 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.