

R.C.S. No. 147/2014

Prashant Vs. Hanmant & oths.

Order Below Exh.30

(Passed on 04th July, 2022)

This is an application filed by defendant No. 2 to 4 for setting aside 'No.W.S.' order passed against them, with permission to file their written statement on record. It has been contended by the defendants that their address were not permanent as they were residing here and there for their employment. Defendant No. 2 was a labour in Telco Company at Pune and his wife and children were residing with defendant No.3. Defendant No. 4 was married in the year 1991 and her summons were sent to her matrimonial address at Kenjal, Tal.Wai. However, she was residing with her husband and children at Balaji Nagar, Pune. Defendant No. 2 and 4 were not having permanent address as they were busy in their employment. Due to these circumstances, the defendants could not inform to their earlier advocate Smt. F.A.Bagwan. Resultantly, on 13/04/2015 without written statement order came to be passed. The present defendants wish to contest the matter by filing their written statement on record. As per the principles of natural justice and audi alterm partem as well as principle of equity, the present application is required to be allowed.

2. The plaintiffs have filed their say below the application and opposed the contention of the defendants by saying that the defendants were duly served and accordingly the defendant No. 4 appeared in the matter on 30/08/2014. Hence, the reason mentioned in the application is not appropriate. The present

application doesn't show any reliable reason for the delay. Hence, they prayed to reject the application.

3. Heard learned advocate Mr. D.S.Shinde for the defendant No. 2 to 4 and learned advocate Shri. S.A.Jadhav for the plaintiff.

4. Perused the application and say along with the entire record. The present suit has been filed for specific performance of contract and perpetual injunction. It is a matter of record that defendant No. 2 to 4 appeared in the matter and sought time to file their written statement. They were given sufficient time. Even thereafter, they failed to file their written statement within stipulated time period. Accordingly, 'No W.S.' order came to be passed against them vide order dated 13/04/2015 passed below Exh.1. This is a suit for specific performance of contract and still defendant No. 1 is not served. The plaintiffs have filed application at Exh.24 for his service through registered post (RPAD). It shows that there is no concrete progress in the matter since its filing for want of service of summons to the defendant No. 1. Now, defendant No. 2 to 4 want to contest the present suit. Having account to the nature of suit, it is always desirable to decide the real controversy between the parties on merit. So far as the delay caused in filing written statement is concerned, the same may be compensated by imposing certain amount of cost. In view of this discussion, the present application deserves to be allowed by passing following order.

ORDER

1. The application (Exh.30) is hereby allowed subject to payment of cost of Rs. 200/- (Rupees Two Hundred Only) payable to the plaintiff.

2. On payment of cost, as above, 'No W.S.' order dated 13/04/2015 passed below Exh.1 is hereby set aside and the written statement filed by defendant No. 2 to 4 be taken on record.

(Dictated and Pronounced in open court.)

Date : 04.07.2022

(R.M. Bhende)
Jt. Civil Judge Jr. Dn. Wai.

CERTIFICATE

“ I certify that this Order uploaded is a true and correct copy of original signed Order”.

Order directly
dictated on : 04.07.2022.

Order checked
and signed on : 04.07.2022.

Uploaded by : S. S. Kumbhar.
Stenographer (Grade-III)

Uploaded on : 06.07.2022.