

ORDER BELOW EXH. 94

Read an application and the reply filed by the plaintiff at Exh.95. Perused the record. Heard the learned counsel for the plaintiff Adv. Shri. K.V. Jadhav and the learned counsel for defendant No. 4 Adv. Smt. Y. A. Modi.

2. Defendant No. 4 filed this instant application and submitted that, defendant No. 4 never received any suit summons. Defendant no. 4 do not know about the filing of this present suit. Defendant no. 4 was ill and therefore, he went to Australia and therefore, he could not get any information about the filing of this present suit. Defendant no. 4 now got knowledge about the present suit and therefore, he appeared through his counsel. Defendant no. 4 want to file written statement and therefore, prayed to set aside exparte order and to grant permission to file the written statement.

3. On the contrary, the plaintiff opposed to this application on the ground that, the suit summons already served to defendant no. 4 on 14.11.2011, vide bailiff report at Exh. 15. However, defendant no. 4 has not deliberately filed written statement nor appeared in the Court. Defendant no. 4 appeared after completion of more than 10 years from the date of the service of summons. The plaintiff expended huge amount since the presentation of the plaint. Now, defendant no. 4 is not entitled to file the written statement and therefore prayed to reject the application.

4. On perusal of the record, it prima facie appears that, the defendant no. 4 got suit summons on 14.11.2011, vide bailiff report at Exh. 15. The bailiff report at Exh. 15 shows that, the bailiff met to defendant no. 4 on 14.11.2011, at-Khandoba Mal, Satara, but defendant no. 4 refused to accept the suit summons. The refusal to accept the suit summons amounts to proper service of summons. Therefore, defendant no. 4 can not say that the suit summons has not been served to him. Moreover, defendant no. 4 appears after more than 10 years from the date of the service of summons.

5. When the suit reached to the final argument defendant no. 4 appeared and prayed to grant permission to file the written statement. Defendant no. 4 was required to file the written statement within 30 days from the date of service of summons. However, defendant no. 4 neither appeared nor filed written statement within the period of limitation. Therefore, the defendant no. 4 may not be entitled to file the written statement after long period i.e. after more than 10 years from the date of service of summons. It is nothing but it is abuse of process of the Court. However, on the other hand, it is also necessary to grant permission to the defendant no. 4 to file the written statement and to contest this suit in order to ascertain the real dispute between the parties. So far as cost is concerned, the plaintiff is required to expend huge amount of money to face litigation. It is necessary to compensate to the plaintiff. Defendant no. 4 is liable to compensate to the plaintiff. In my opinion, defendant no.4 is liable to pay cost of amount of Rs.10,000/- to the plaintiff and the cost amount of Rs.10,000/- to DLSA, Satara. With

this observations and discussion, I proceed to pass the following.

ORDER

1. The application is allowed.
2. 'Exparte order' dated 09.03.2018 is set aside and defendant no. 4 is permitted to file the written statement subject to cost of Rs.10,000/- payable by the defendant no. 4 to the plaintiff and the cost of Rs.10,000/- payable by the defendant no. 4 to DLSA, Satara till next date, otherwise this application shall automatically stands rejected.
3. Both the parties are directed to take note of it.

Vaduj
Date: 02.11.2023

(D.D. Fulzele)
Civil Judge Senior Division, Vaduj