

COMMON ORDER BELOW EXH. 9 & 10 IN R.C.S. NO. 25/2024

(Prabhu Dayal Sahu & Ors. V/s. Kishorilal Sahu)

1. The defendant has moved the present applications for condonation of delay and setting aside ex-parte order. It is contended that, the suit is filed for partition and summons was received by the wife of defendant and so, the defendant could not get the information within time and hence, he failed to appear. Further contended that, the defendant is residing with his son at Nagpur, due to illness he could not attend and it revealed that, ex-parte order was passed against him on 1/08/2024. He has also contended that, due to above reason he could not file the application for setting aside said order and there is delay of 104 days. Considering all above aspects he prayed to allow the applications.

2. The learned Advocate for the plaintiffs has filed say and denied the contentions of applications. Per contra, contended that, the grounds mention are not proper, the ex-parte order was passed on 9/09/2024. It is also contended that, the defendant only with intent to prolong the matter has move the applications. Hence he prayed for rejection of applications.

3. Perused the record. It reveals that, the suit is for partition. Further record shows that, the defendant was served vide Exh. 6 and said summons report shows that, it was received by the wife of present defendant. The defendant has on oath contended

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that, he could not get the information of suit within time, he could not appear due to illness and as he residing at Nagpur with his son. Further record shows that, the ex-parte order is passed against him on 9/09/2024. So it seems that, the delay is about 3 months.

4. Record shows that, the suit is for partition of immovable property. So considering the nature of the suit and the reasons mentioned I hold that to decide the matter on its own merits the defendant has to be granted an opportunity to participate in the present proceedings. This will not cause any prejudice to the plaintiffs. Further, the delay can very well be compensated by imposing cost upon defendant for the delay. Considering all above things I hold that applications have to be allowed, hence, following order.

ORDER

1. Applications are allowed subject to cost of Rs.500/- (Rs. Five hundred only) payable to plaintiffs.
2. The ex-parte order dated 09/09/2024 is hereby set aside and defendant is permitted to file his written statement.

Date: 22/01/2025
Karanja Gha.

(V. S. Wagh)
Civil Judge Jr. Division,
Karanja Gha. Dist. Wardha