

**ORDER PASSED BELOW EXH. 27**

With instant application defendant seek permission to appear and defend the claim. According to them, they were out of station from pandemic of corona virus. Therefore, they have not appeared and file their written statement within stipulated time. Therefore, an ex-parte order has been passed against them and needs to be set-aside.

2. The plaintiff opposed application on contending that, after closing evidence of plaintiff and final hearing of the case, the defendant appeared before court and filed this application. They willfully delayed to appear before court and reason mentioned is not proper and application is without affidavit therefore, application to be rejected. If application is allowed heavy cost Rs. 5000/- be imposed on them.

3. Perused application and say. Heard both the sides. As per Exh.08 and 09 suit summons served to the defendants on 16/09/2020 but, they failed to appear in the proceeding. Therefore, ex-parte order has been passed against them on 09/12/2021 at Exh.1. Thereafter, the temporary injunction at Exh. 5 is not pressed on behalf of plaintiff on 09/12/2021 and thereafter, plaintiff leads his evidence.

4. Record makes it clear that, the defendants was having proper knowledge and information about the suit. The defendants are completely negligent in respect of the proceeding. They

willfully avoided to appear and proceed with the cause.

5. Reasons put-forth by the defendants for setting aside an order of ex-parte are evasive. Because, the name of station or place where they are stayed for laborer is not mentioned in the application. Further, the application is not supported by affidavit. But, he has not taken pain before the Court in spite the knowledge of the Suit. However, they are evasive in this respect.

6. The suit is for permanent injunction in respect of immovable property. The application is not supported by the affidavit. The matter is for final argument, in this juncture this application is moved. Considering the span of time that had elapsed in between service of summons and passing ex-parte order as well as application for accepting the written statement is near about nine months. But, it is practicable the civil court must make every endeavor to decide the right of the parties on correct adjudication and by giving property opportunities to the parties. The defendants right should not be taken away. Considering the nature of the suit, it will just and proper to give an opportunity to the defendants in the interest of justice.

7. Now so far as the delay is concerned which has been caused by defendants in submitting their written statements is concerned, the plaintiff can be very well compensated with certain costs. The dates of service of summons and date of moving applications by defendants are already stated herebefore. Having regard to the span of time, I think it desirable to impose costs of Rs.

400/- on each of the defendants payable to the plaintiff. By imposing costs, the written statements are accepted.

8. By doing so, plaintiff's rights would not be put to any sort of prejudice. On the contrary by accepting the written statements, it would be more easier to adjudicate the right of parties by full-fledged hearing. This would be a proper order in the circumstances of the case. Therefore, considering all above facts and circumstances, I pass following order-

**ORDER**

- 1) Application is hereby allowed subject to cost of Rs.1,600/- (Two Thousand Six hundred only) to be paid to the plaintiff.
- 2) The ex-parte order against defendant Nos. 1 to 4 is set aside and they are permitted to file W.S. on record.
- 3) Costs is condition precedent to accepts the W.S.

Date:-15/09/2022

( S.N. Gavali)  
Jt. Civil Judge (Junior Division),  
Risod

**CERTIFICATE**

I affirm that the contents of this P.D.F. File Order/Judgment are same word to word, as per the original **Order**.

Name of the Stenographer : **Rohan S. Koshti (L.G.)**  
Name of court : Jt.C.J.J.D.& JMFC, Risod.  
Date : 15.09.2022  
Order signed by the  
Presiding Officer : 15.09.2022  
**Order uploaded on : 16.09.2022**