

MHWS100004412023 	ORDER BELOW EXH.20 RCS No.16 OF 2023 Rajeshwar Parashram Gudade Vs. Parashram Daryebhan Gudade Passed On 08nd May, 2024
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01. This is an application filed by defendant Nos.2 & 3 for setting aside *Ex-parte* order passed dated 21.08.2023 against them. It is the contention of defendant Nos.2 & 3 that, they are having bonafide impression that the steps are to be taken during the period of the illness of defendant No.3. Defendant Nos.2 and 3 were out of station and medical problems, defendant No.3 could not manage to communicate before this court. If the permission is granted to appear in the suit and to defend the suit then it will not cause any prejudice to the plaintiffs. Hence, prayed to set aside the *Ex-parte* order passed against them and permission to file their written statement.

02. The plaintiff by filing say overleaf of this application and strongly opposed on the ground that, on 27.03.2023 and 11.04.2023 the summons at Exhibit Nos.07 and 08 were duly served to defendant Nos.2 and 3 but they have failed to appear before this Court. Sufficient chances were given to them but they are not appeared. Ultimately, he has prayed for reject the application.

03. Heard, learned Advocate for defendant Nos.2 & 3 and learned Advocate for the plaintiff. They have submitted their argument as per the application and say respectively.

04. Perused the record and proceeding. It is seen that the summons were served to defendant Nos.2 and 3 on 27.03.2023 and

11.04.2023. *Ex-parte* order passed dated 21.08.2023. Present application has been filed on 12.04.2024. Thus, the application has been filed after a period of one year from the date of service of summons. The suit is for the partition, separate possession and permanent injunction. The opportunity needs to be granted to defendant Nos.2 and 3 to appear and contest the matter on merit. The right and interest of defendant Nos.2 and 3 is involved in the present case. The delay caused to appear can be compensated by imposing costs on defendant Nos.2 and 3. Considering the circumstances and in the interest of justice for fair trial, it is necessary to allow defendant Nos.2 and 3 to appear and to file written statement for deciding real dispute in the suit on merit. Hence, I pass the following order :-

ORDER

1. '*Ex-parte* order' passed on dated 21.08.2023 against defendant Nos.2 and 3 is hereby set-aside subject to cost of Rs.500/- each payable to the plaintiff and permission is granted to defendant Nos.2 and 3 for filing their say to Exhibit-05 and the written statement.
2. After the deposited the costs their written statement or say be taken on record.
(Dictated and pronounced in open Court).

Place : Malegaon
Date : 08.05.2024

[Pravin U.Kulkarni]
Jt.Civil Judge (J.D.) Malegaon
Distt.Washim

CERTIFICATE

I affirm that the contents of this P.D.F. file Order is same word to word, as per the original Order.

Name of the Stenographer : **Shivam B. Patange (L.G.)**

Court & Judge Name : Jt. C.J.J.D and J.M.F.C, Malegaon.

Date of Order : 08.05.2024

Order signed by the

Presiding Officer on : 08.05.2024

Order uploaded on : 08.05.2024