



01. This is an application filed by the defendant No.1 for setting aside *Ex-parte* order passed dated 08.12.2023 against him. It is the contention of the defendant No.1 that, he is the permanent residence at Kinhiraja, Tq. Malegaon Dist. Washim. But, he temporarily settled at Pune. He is doing contract work. Therefore, he was unaware about the summons of the present suit. If the permission is granted to appear in the suit and to defend the suit then it will not cause any prejudice to the plaintiff. Hence, prayed to set aside the *Ex-parte* order passed against him.

02. The plaintiff by filing say overleaf of this application submitted that, the plaintiff has sent the interim order on the postal address of defendant No.1. Thereafter, also defendant No.1 is making construction. On 27.10.2023 the summons was duly served but he failed to appear. Hence, prayed to reject the application.

03. Heard, Mr.R,S.Joshi, learned Advocate for the defendant No.1 and Mr.J.G.Lad, learned Advocate for the plaintiff. They have submitted their argument as per the application and say respectively.

04. Defendant No.1 filed his driving license and electricity bill below list Exh.23. On perusal it reveals that, his address is at Pune. The contention of defendant No.1 is supported by the documents. On perusal of Exhibit-01 it appears that, the address of defendant No.1 is shown at Kinhiraja. Now, defendant No.1 is appeared before this Court and deserves to contest the present matter. The suit is for the perpetual injunction. The opportunity

needs to be granted to defendant No.1 to appear and contest the matter on merit. The right and interest of the defendant No.1 is involved in the present case. The delay caused to appear can be compensated by imposing costs on the defendant No.1. Considering the circumstances and in the interest of justice for fair trial, it is necessary to allow defendant No.1 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 08.12.2023 against defendant No.1 is hereby set-aside subject to cost of Rs.500/- payable to the plaintiff and permission is granted to the defendant No.1 for filing his say to Exhibit-05 and the written statement.
2. After the deposited the costs his written statement or say be taken on record.
(Dictated and pronounced in open Court).

Place : Malegaon
Date : 02.02.2024

[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 : P.U.Kulkarni,
Jt. C.J.J.D and J.M.F.C, Malegaon.
Date of Order : 02.02.2024
Order signed by the
Presiding Officer on : 02.02.2024
Order uploaded on : 02.02.2024