



WEB COPY



A.No.1958 of 2022

in

C.S.No.916 of 2016

V.BHAVANI SUBBAROYAN, J.

This application has been filed to set aside the ex-parte order dated 22.02.2022.

2. On a perusal of the affidavit of applicant, it is seen that the applicant is the first defendant in the suit. The suit has been filed by the respondent/plaintiff for a preliminary decree for partition and separate possession of the plaintiffs 3/5th share (*1/5th share to each of the plaintiffs*) in the property described in the schedule, for appointment of a Commissioner for effecting the partition in terms of the preliminary decree and directing the 1st defendant to pay a sum of Rs.3,60,000/- towards past *mesne* profits and Rs.10,000/- every month from the date of plaint till the date of payment to the plaintiffs for use and occupation of the property described in the schedule.

3. It is also seen that the 1st defendant has received a copy of the plaint through private notice sent by the plaintiff's counsel and the suit summon was not served on him. While the 1st defendant was making



necessary arrangements for the probate of the WILL, the 1st defendant has approached his sisters for consent affidavit for Probate of the WILL of his late father T.S.Vasudeva Rao, dated 27.12.1974 and his sisters refused to give consent to the same.

4. As the 1st defendant is suffering from 'Filariasis, his movement is restricted. Hence, the 1st defendant was unable to contact his Advocate and by oversight, written statement was not filed on time. Due to COVID-19 pandemic situation, the 1st defendant could not meet his counsel to give necessary instructions to prepare the written statement and file the same before this Court. In view of the above reasons, there has been delay in filing the written statement. Hence the above delay caused is neither wilful nor wanton, but only due to the *bona fide* reasons mentioned above. Due to his ill-health, the delay was caused and hence, this Court had set ex-parte on 22.02.2022 and the case was posted for trial. Therefore, the first defendant sought for to set aside the ex-parte order dated 22.02.2022 for not filing the written statement and to restore the suit.



case.

6. On being satisfied with the reasons stated in the affidavit filed in support of this application, this Court is inclined to set aside the ex-parte order dated 22.02.2022 for non-filing of the written statement and accordingly, this application is allowed. No costs.

29.04.2022

msm



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