

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.837 OF 2001.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.A.H.Kasliwal, advocate holding for Ms.Netrali A.Jain, advocate for the Petitioner.
Mr.S.H.Joshi, advocate for the Respondent.

CORAM : S.V.GANGAPURWALA, J.
Date : 26.08.2015.

PER COURT :

1. Heard.
2. Mr.Kasliwal, learned counsel for the petitioner contends that the decree is not an exparte decree, the same is passed in absence of the Written Statement. As such the decree is passed U/o VIII Rule 10 of the C.P.C., against which an application U/o IX Rule 13 of the C.P.C is not maintainable. The only remedy for the defendant is to file appeal. The application itself was not tenable. The said aspect is not properly considered by the Court.
3. The learned counsel further contends that the application for setting aside exparte decree did not contend any reasons much less sufficient cause for allowing the application. It is not disputed that the notice/suit summons were served upon the defendant. The

defendant thereafter failed to file Written Statement. As such the defendant can not be heard to say that it was exparte. The learned counsel further submits that even the witness of the defendant in his deposition admitted that he does not have any authority to depose, still, the Court has exercised the discretion in an arbitrary manner. Material irregularity has been committed by the trial Court while passing the impugned order, resulting in gross mis-carriage of justice. According to the learned counsel, the order condoning the delay in filing application for setting aside exparte decree would be of no avail, as the considerations while entertaining application for condonation of delay and application for setting aside exparte decree are different.

4. Mr.Joshi, learned counsel submits that it is not that upon non-filing of Written Statement, the Court pronounced the judgment. The plaintiff was directed to lead evidence, as such the judgment would be U/o IX Rule 6 of the C.P.C. The learned counsel relies on the judgment of the learned Single Judge of this Court in a case of **“Gaurang Vs. Merchant and others Vs. Madhliso & Co. Pvt. Ltd and others”** reported in **2004 (5) Bom.C.R. 700**. The learned counsel submits that when the suit summons were served, there was Administrator appointed. Thereafter elections had taken place and the Commissioner was appointed, the papers were not with the Commissioner and it is

only upon execution being filed, the defendant got the knowledge of the exparte decree. The application for condonation of delay was allowed by the trial Court. Against the said order, the plaintiff had filed Civil Revision Application bearing No.1160/1999 which is also dismissed.

5. I have considered the submissions. The decree can not be said to be U/o VIII Rule 10 of the C.P.C as after the defendant failed to file Written Statement, the Court did not pronounce the judgment but proceeded further and directed the plaintiff to adduce the evidence. The decree would be an exparte decree.

6. The trial Court while allowing the application for setting aside exparte decree has observed and accepted the contention of the defendant that when the suit summons were served, the Administrator was incharge of the defendant. Subsequently, the elections had taken place and the Commissioner was appointed. The Commissioner was not handed over the papers and after the execution was filed, the defendant got the knowledge of the same. The discretion has been exercised by the trial Court in a plausible manner.

7. Considering the above, no interference is called for. The Civil Revision Application stands disposed of. No costs.

8. The plaintiff and original defendant No.1 are before this Court. The plaintiff and defendant No.1 shall appear before the

trial Court on 28.9.2015, as such it is not necessary to issue separate notices to plaintiff and defendant No.1. The trial Court may issue notice to defendant No.2, in case the defendant No.2 has not appeared.

9. Considering the fact that the suit is old one, the defendant No.1 shall file its Written Statement within a period of one month from the date of appearance before the trial Court. The trial Court shall endeavour to decide the suit expeditiously, preferably within nine (9) months from the date of appearance.

(S . V . GANGAPURWALA, J .)

Dt.26.08.2015.
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