

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10321 OF 2014

Namdeo s/o Laxman Lokhande,
Age: 59 years, Occ: Agri.,
R/o. Sy. No. 502/18, beside
Bus Stand, Dharur, Tq. Dharur,
Dist. Beed.

...Petitioner

versus

Prabhakar @ Prabhu s/o Venkoba Maind,
Age: 71 years, Occ: Agri.,
R/o. Kille Dharur, Tq. Dharur,
Dist. Beed & ors.

...Respondents

.....

Mr. G. G. Suryawanshi, Advocate for petitioner
Mr. V. M. Chate, Advocate for respondent No. 1 & 2
Mr. A. R. Joshi, Advocate h/f Mr. R. S. Deshmukh, Advocate for
respondent No. 4

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CORAM : N.W. SAMBRE, J.

DATE : 16th NOVEMBER, 2015

ORAL ORDER :

In Regular Civil Suit No. 05 of 2010 defendant No. 3 was proceeded *exparte* by an order dated 08/04/2011, of which setting aside was sought by Exhibit-59. While dealing with the application Exhibit-59, learned trial Court directed defendant No. 3 to produce on record medical papers in respect of cause cited. The petitioner-defendant No. 3 produced certificate dated 16/06/2014, which according to learned trial Court, was not sufficient and as such,

rejected the application Exhibit-59 for setting aside *exparte* decree. As such, present writ petition.

2. Learned Counsel for the petitioner would urge that the trial in the suit is yet to commence and if the application for setting aside is granted, no prejudice will be caused to the plaintiff. According to him, he has produced medical evidence and other papers alongwith written statement, which required to be taken into account for setting aside the order proceeding *exparte* against him. He would then urge that he deposited costs of Rs.3000/- before trial Court in compliance with the earlier order of this Court on 30/03/2014 to show his bonafide.

2. Mr. Cahte, learned Counsel for respondent Nos. 1 and 2 has strenuously opposed grant of prayer, as according to him, cause cited for setting aside *exparte* order is not genuine and the medical certificate dated 16/06/2014 hardly supports the same.

3. Mr. Joshi, learned Counsel for respondent No. 4 has supported the prayer.

4. It appears that trial in the suit is yet to be commenced and the suit is at its initial stage. The petitioner has already

deposited amount of Rs.3000/- before learned trial Court to show his bonafide, in addition to Doctor's certificate produced at page 20 in support of his cause.

5. In view of above, it will be appropriate, in my opinion, to quash and set aside the order dated 20/06/2014 passed below Exhibit-59 by learned Civil Judge, Junior Division, Dharur in Regular Civil Suit No. 05 of 2010 and grant the application Exhibit-59.

6. Respondent Nos. 1 and 2 herein will be at liberty to withdraw the amount of Rs.3000/- deposited before the trial Court. The writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]