

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

WRIT PETITION NO. 11652 OF 2014

Shivaji S/o Venka Shinde,
Age : 65, Occuu: Agril.,
R/o Holi, Tq. Lohara,
Dist. Osmanabad.

...PETITIONER
(Original Defendant No. 1)

versus

Devidas S/o Bhagvanrao Jadhav,
Age: 70, occu. Agril.,
R/o: Gubal Tq. Ausa, Dist. Latur.

...RESPONDENT
(Original plaintiff)

.....
Mr. S.J. Salgare, Advocate for Petitioner
Mr. S.N. Patne, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 29th JUNE, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally with consent.
2. This petition has been moved by petitioner - original defendant No. 1, aggrieved by order dated 25-11-2014 on Exhibit-31 in Regular Civil Suit No. 70 of 2014 passed by Civil Judge, Junior Division, Lohara whereunder his request for setting aside '*ex-parte*' order passed on 14-07-2014, has been turned down.
3. Regular Civil Suit No. 70 of 2014 has been instituted by present respondent, seeking permanent injunction in respect of land bearing

Gut No. 51/1 to the extent of 1 Hectare, 21 *Aar* situated at village Holi, Ta. Lohara, District Osmanabad. After receipt of summons, it appears that petitioner had instructed a lawyer to appear on his behalf, however, later on could not keep contact with the advocate and as such, on 14-07-2014 an order to proceed *ex-parte* had been passed against present petitioner.

4. Thereafter, in the month of November-2014, application Exhibit-31 came to be moved for setting aside *ex-parte* order, and also praying for setting aside 'No W.S.'" Application contains reasons accounting for belated movement in this respect. It appears that impression that was carried throughout was that the lawyer for the petitioner had addressed the matter accordingly which is apparent from impugned order. By this time, it appears that suit had been taken up for hearing and as such, the respondent – plaintiff purportedly opposed the request under the application, on the grounds that the matter has reached the stage of hearing of petitioner and at this stage request under application cannot be considered.

5. Looking at aforesaid, one thing is clear that the respondent does not dispute veracity of the contents of the application for making belated approach under Exhibit-31. Having regard to that and since the order appears to have been passed predominantly on technical considerations and as under the earlier orders of this court it appears that a course has been chartered for this matter by directing the petitioner to deposit a sum of Rs. 5000/- giving indication that matter requires lenient consideration.

6 In view of aforesaid, I deem it appropriate that without going into technicalities of the matter, inconvenience caused to the plaintiff can be met with by appropriating the amount deposited pursuant to order dated 6th January, 2014 of this court towards cost to be paid to the plaintiff.

7. Writ petition, as such, stands allowed in terms of prayer clause "C" subject to payment of costs of Rs. 5000/- to be paid by the petitioner-original defendant to the respondent - original plaintiff. The amount deposited pursuant to order of this court dated 6th January, 2015 be appropriated towards costs. Accordingly, impugned order dated 25-11-2014 on Exhibit-31 in Regular Civil Suit No. 70 of 2014 passed by Civil Judge, Junior Division, Lohara stands set aside, and application Exhibit-31 stands allowed. The amount deposited be allowed to be withdrawn by respondent - plaintiff.

8. Rule is made absolute in aforesaid terms.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK