

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11326 OF 2015

Rafik @ Mohammadrafic Hanif Mujawar ... Petitioner
Vs.
Badshaha Gulab Mujawar and others ... Respondents

Mr. Manoj Patil for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 26, 2015

P.C. :

Heard Mr. Patil, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original defendant No.4 has challenged the judgment and order dated 01.10.2015 passed by the learned 4th Joint Civil Judge, Junior Division, Ichalkaranji below exhibit-73 in Regular Civil Suit No.160 of 2009. By that order, the learned trial Judge rejected the application made by the petitioner for setting aside the ex-parte order and for filing written statement.

3. Mr. Patil submitted that in paragraph 5 of the impugned order, the learned trial Judge observed that defendant No.4 was served with Suit summons on 12.10.2009 and on 09.06.2010, order to proceed ex-parte against defendant No.4 was passed. He invited my attention to Rojnama and submitted that Suit summons was not served on defendant No.4 on 12.10.2009. In fact, Rojnama upto 09.06.2010 records that service report of defendant No.4 is not yet received. Rojnama dated 09.06.2010 records that service report of defendants No.4 and 5 was received. On the same day, the learned trial Judge passed the order to proceed ex-parte against defendants No.4 and 5.

4. Perusal of the impugned order, and in particular paragraph 6 shows that the learned trial Judge rejected the application on the ground that no case is made out for setting aside the order as the application was made after more than 4 years. Mr. Patil, upon taking instructions from the petitioner, who is present in the Court, states that petitioner will withdraw this Petition if liberty is reserved to take out fresh application for setting aside order dated 09.06.2010.

5. In view thereof, on the motion made by Mr. Patil, upon instructions, Petition is allowed to be withdrawn with liberty to take out fresh application for setting aside order dated 09.06.2010. If such application is taken out, all contentions of the plaintiffs are kept open and the learned trial Judge will decide the said application uninfluenced by the observations made in the impugned order. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab