

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1489 OF 2014

M/s. Shri Bharat Mines and Minerals	..	Petitioner
VS.		
M/s. Coramandal Mines and Exports Pvt. Ltd.	..	Respondent

Mr. S. S. Tambekar for Petitioner.
Mr. A. S. Patil for Respondent.

CORAM : M. S. SONAK, J.
DATE: 23 MARCH 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition challenges order dated 16 December 2013 made by the Joint Civil Judge, Senior Division, Kolhapur, rejecting the petitioner's application to set aside the order for proceeding *exparte* and declining to take on record the petitioner's written statement.

3] The records would disclose that the summons for settlement of issues was served upon the petitioner (original defendant) on 28 February 2013. On 16 March 2013, i.e. even before the period of ninety days, which is the outer limit for filing written statement would expire, the petitioner was marked as '*exparte*'. The outer limit of ninety days expired on 28 May 2013. On 17 June 2013, the

petitioner was unaware that an order had been made on 16 March 2013 that the matter may proceed exparte.

4] Upon realisation of the correct position, the petitioner on 28 August 2013 made a comprehensive application seeking recall of the order dated 16 March 2013 and for leave to take on record the petitioner's written statement.

5] By the impugned order dated 16 December 2013, the aforesaid application made on 28 August 2013 has been rejected by the learned Civil Judge. Perusal of the impugned order would indicate that the learned Civil Judge has basically held the petitioner's absence on 16 March 2013 against the petitioner.

6] If the aforesaid circumstances are cumulatively considered, then although there is some negligence on the part of the petitioner, the negligence is certainly not of such magnitude as to proceed in the matter exparte or to deny the petitioner leave to file written statement. The application made on 28 August 2013 states that the business of the petitioner is spread over several States and for this reason, the petitioner has to travel. The application states that it is for this reason that the petitioner could not contact the Advocate and file written statement in time. The claim in the present case is

an amount of Rs.75,00,000/-. Therefore, it would be appropriate if an additional opportunity is granted to the petitioner, subject of course to the payment of costs by the petitioner in favour of the respondent. The petitioner has volunteered to pay costs of Rs.25,000/-.

7] In view of the aforesaid, the impugned order dated 16 December 2013 is set aside, so also the order dated 16 March 2013 marking the petitioner '*ex parte*' is set aside. If the petitioner files written statement within a period of two weeks from today, the learned Civil Judge to take the same on record after verifying that the petitioner has paid costs of Rs.25,000/- in favour of the respondent. The petitioner to either pay or deposit before the learned Civil Judge, costs of Rs.25,000/- within a period of two weeks from today.

8] Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs in the present petition.

9] All parties to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)