

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2490 OF 2013

Shri.Popat Baban Malode .. Petitioner
vs.
Smt. Manjulabai N. Malode and ors. .. Respondents

Mr. Sachin Kadam for the Petitioner.
None for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 16 MARCH, 2015

P.C. :-

1] Learned counsel appearing for the petitioner files an affidavit of service, confirming legal heirs of respondent Nos.3(A) and 3(B) have been served.

2] Rule.

3] By order dated 30 April 2013, the parties were put to notice that the petition may be heard and disposed of finally at the admission stage.

4] Although, notices have been served none of the respondents have appeared in the matter. Consequent upon death of respondent No.3, leave was granted to bring the heirs of deceased respondent No.3 on record. Accordingly, the said heirs have brought on record and duly served.

5] This petition questions the orders dated 3 May 2012, by which the Regular Civil Suit No.172 of 2011 (said Suit) was directed

to proceed *ex-parte* against the petitioner-original defendant No.3 and the order dated 1 November 2012, by which the learned Trial Judge declined the petitioner leave to file a written statement and recall the order to proceed *ex-parte* against the petitioner.

6] From the perusal of the records, it is seen that the learned Trial Judge has made the order dated 1 November 2012 on the sole ground that the application made by the petitioner on 19 July 2012 seeking recall of the order dated 3 May 2012 and seeking leave to file a written statement was vague, since no date of his daughter's marriage was stated therein.

7] If the application dated 19 July 2012 and other records produced alongwith this petition are perused, it cannot be said that the application was vague. No doubt, the date of marriage was not stated in the application. However, the petitioner has produced on record the marriage invitation card, which clearly indicates that the marriage of petitioner's daughter was scheduled on 15 June 2012. In these circumstances, it can be said that the petitioner was disabled to contact his advocates and impart instructions in the matter of preparation and filing of the written statement.

8] For the aforesaid reasons, the impugned orders dated 3 May 2012 and 1 November 2012 are set aside. The petitioner, subject to payment of costs of Rs.5,000/- to the plaintiffs in the said Suit, is permitted to file the written statement.

9] The petitioner to pay the costs within a period of two weeks from today and upon payment thereon, learned Trial Judge to accept the written statement annexed alongwith application dated 19 July 2012 on record.

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

(M. S. SONAK, J.)

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