

1. Heard Mr. Vaibhav Ugale, learned counsel for the petitioner, Mr. A.R.Matkari, learned A.G.P for respondent no.1 and Ms. Savita Prabhune, learned counsel for respondents no.2 to 4 at length.
2. Rule. Learned counsel for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up finally.
3. By this Petition under Article 227 of the Constitution of India, original defendant no.2 has challenged the Judgment and order dated 10.6.2015 passed by the learned Jt. Civil Judge, Jr. Dn, Daund, below Exhibit -30 in Regular Civil Suit No.238 of 2012. By that order, the learned trial Judge rejected the application filed by defendant no.2 for setting aside 'No W.S.' order dated 18.9.2014.
4. In support of this Petition, Mr. Ugale reiterated the

submissions that were made before the trial Court. He submitted that the petitioner is residing with her late husband in Mumbai. Her late husband was head of department of Orthopedics at J.J. Hospital. He was allotted office Quarters. The petitioner was residing along with her husband who expired on 11.10.2014. Despite respondents no. 2 to 4 being aware of the petitioner's residence at Mumbai, substituted service was effected at her Pune address. He submitted that 'No W.S.' order was passed on 18.9.2014 and application for setting aside 'No W.S.' order was filed on 6.4.2015. In view thereof, the learned trial Judge should have allowed the application more so when the petitioner's Written Statement is ready.

5. On the other hand, Ms. Prabhune supported the impugned order. She submitted that notice was served on defendant no.2 under Order V, Rule 20 of C.P.C. The learned trial Judge, after going through the report of Bailiff Exhibit-19, observed that service on petitioner-defendant no.2 was effected under Order V Rule 20 and, therefore, ordered suit to proceed ex parte against defendant no.2. She further submitted that the reasons given in paragraphs 6 and 7 of the application are incorrect and are denied by respondents no.2 to 4. She also submitted that respondents no.2 to 5 have instituted suit challenging sale deed dated 30.9.2007 executed by Dattu Mane in favour of the petitioner. In the sale deed, address of the petitioner is given at

Pune. She further submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. I have considered the rival submissions made by learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, by order dated 18.9.2014 the learned trial Judge directed suit to proceed against defendant no.2 exparte. Application was made on 6.4.2015 for setting aside 'No W.S.' Order. Perusal of the order dated 18.9.2014 shows that the petitioner-defendant no.2 was served under Order V, Rule 20. In other words, the petitioner was served by way of substituted service. Thus, it is evident that in the first place, the petitioner was served by way of substituted service under Order V, Rule 20. Secondly, the order was passed on 18.9.2014 and the application was filed on 6.4.2015. It, therefore, cannot be said that the petitioner was indolent in filing that application. Thirdly, the petitioner's written statement is also ready and is affirmed on 6.4.2015. In view thereof, in my opinion, the learned trial Judge ought to have allowed the application subject to imposition of costs on the petitioner. The learned trial Judge rejected the application and observed in paragraph 5 that the address of the petitioner in the sale deed and the address in the suit is same. It was further observed that though the petitioner claims to be residing in Mumbai, no document was produced to show her

residence in Mumbai. It was also noted that the application was not filed along with process memo and written statement. Mr Ugale submitted that the document at Exhibit B, (pages 19 to 27), is written statement which is affirmed on 6.4.2015 and the petitioner wants to file that written statement on record.

7. In view thereof, the impugned order cannot be sustained and the same is required to be set aside. Petition is disposed of in the following terms:

(i) The impugned order dated 10.6.2015 is quashed and set aside. The order dated 18.9.2014 directing the suit to proceed exparte against defendant no.2 is also set aside.

(ii) Written Statement of defendant no.2 affirmed on 6.4.2015 which is at Exhibit-B (pages 19 to 27 of this petition) shall be taken on record subject to payment of costs of Rs.5000/- to respondents no.2 to 5 within two weeks from today. Costs shall either be paid to respondents no.2 to 5 or deposited in the trial Court within two weeks from today. It is a condition precedent. It is made clear that in case amount is not paid or deposited within two weeks from today, the impugned orders shall stand revived without further reference to the Court. The petitioner shall file address Purshis within two weeks from today. Respondents no.2 to 5 are permitted to withdraw that amount unconditionally.

8. Rule is made absolute in the aforesaid terms.

(R.G.KETKAR, J.)