

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11573 OF 2014

Kulwant Singh Pralhad Singh Kohli	.. Petitioner
vs.	
Neil B David	.. Respondent

Mr. Atul G. Damle, Sr. Advocate i/b Rupesh R. Lanjekar for the
Petitioner.
Mr. G.S. Bhat for Respondent.

CORAM : M. S. SONAK, J.
DATE : 10 JUNE 2015.

P.C. :-

1] This petition is directed against the order dated 3 November 2014 made by the Appellate Bench of the Small Causes Court, Bombay setting aside *ex-parte* decree in R.A.E. Suit No. 74/109 of 2011, subject to payment of costs of Rs.3,000/- by the respondent.

2] Mr. Damle, learned senior advocate for the petitioner, submitted that there was delay of over one year, which was not at all satisfactorily explained by the respondent. Mr. Damle also submitted that the Appellate Bench has misconstrued certain observations made by the Small Causes Court and on the said basis concluded that there was no delay involved in seeking setting aside of the *ex-parte* decree.

3] Having heard the learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the impugned order, except perhaps to the extent of costs awarded therein. The impugned order records that the Small Causes Court has itself come to the conclusion that there was no proper service of summons upon the respondent. If this be the position, then, the date of knowledge of *ex-parte* decree assumes relevance. The Appellate Bench, has correctly appreciated the facts and circumstances and has exercised its discretion positively by condoning the delay, if any, and setting aside the *ex-parte* decree. There is neither any perversity of approach nor arbitrariness involved in making of the impugned order.

4] The costs of Rs.3000/- awarded are, however, too meagre in the facts and circumstances of the case. As a result of setting aside of *ex-parte* decree, the proceedings shall have to virtually recommence before the Small Causes Court. In these circumstances, the amount of costs are enhanced to Rs.10,000/- (Rs. Ten Thousand only). The respondent to pay balance costs of Rs.7,000/- to the petitioner within a period of six weeks from today or to deposit the costs before the Small Causes Court within the said period. Upon deposit,

the petitioner shall be at liberty to withdraw the same unconditionally.

5] Further, taking into consideration the circumstance that the suit was instituted in the year 2011 and all the parties involved are senior citizens, the Small Causes Court is directed to expedite the suit and to dispose of the same within a period of one year from today.

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

7] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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