

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 9658 OF 2015

Sow Sarika w/o Eknath Revankar
aged 33 years, occ. Household & agril
r/o Himpalner, Tq. Chakur, Dist. Latur
At present, Sukurpark Co-op. Housing Society
Building No. 4, Flat No. 3, Kalwa
Dist. Thana

.. PETITIONER

VERSUS

1. Shrimati Janabai w/o Nagnath Suryawanshi
aged 51 years, occ. Household
r/o Himpalner, Tq. Chakur,
Dist. Latur

2. Rameshwar s/o Nagnath Suryawanshi
aged 13 years,
u/g of his real Mother
i.e. respondent no. 1
Janabai w/o Nagnath Suryawanshi

.. RESPONDENTS

Ms. P.V. Bodke Patil, advocate for petitioner.
Mr. V.G. Kodale, advocate holding for Mr. V.D. Gunale, advocate for respondents.

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CORAM : S. B. SHUKRE, J.

DATE : 3rd FEBRUARY, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard finally by consent of learned counsel for the respective parties.
3. Legality and correctness of the order dated 15th June, 2015, is the point involved in this petition. The basis of challenge is that once the suit is fixed for pronouncement of judgment, the trial Court cannot turn back the

clock and allow the defendant to file his written statement and also adduce evidence, by setting aside the order of proceeding ex-parte against him, by invoking powers under Order 9 Rule 7 of the Code of Civil Procedure.

4. The law in this regard is well settled and it is not permissible for the Court to pass such an order at the stage when the suit is fixed for pronouncement of judgment. Reference in this regard should be made to the law laid down by the Honourable Apex Court in the matter of Arjun Singh Vs. Mohindra Kumar, **AIR 1964 S.C. 993**, which has been followed by the learned Single Judge of this Court in the case of Chandrabhan s/o. Keshavrao Dohiphode and another Vs. State Bank of India **2001(2) Bom.C.R. 418**. But the question is, in exercise of extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India, whether this Court would be justified in making any interference in an order which apparently cannot be sustained in law. I would only say that the well settled principles of law would not permit this Court to interfere in the matter like this as it is not for this Court to correct every error of law, unless there is miscarriage of justice occurred on account of continuation of an order which is passed apparently against the provisions of law or settled principles of law.

5. In the case of Lal Devi and another Vs. Vaneeta Jain and others (2007) **7 Supreme Court Cases 200**, the Honourable Apex Court, while dealing with the similar situation, held that, in the interest of justice, in such matters, it would not go into the technicalities of the legal question thrown open by the arguments advanced on the part of the rival parties and would

be in favour of setting aside ex-parte decree only if there are sufficient grounds for forming an opinion that defendants could not appear before the Court for defending the suit for well justified reasons. In the instant case, I find that there are sufficient grounds which made respondent, who is original defendant no. 2, not defend the suit in proper manner. It is his contention that when the suit was filed against him, he was minor and he was not informed of the developments in the suit and, when he learnt about the same, he immediately contacted his advocate and took necessary steps for bringing on record his defence. Such being the facts of the case, appearing from record of the suit itself, I am of the view that there exists on record adequate justification for setting aside order of proceeding ex-parte against respondents. If the justification already exists, it is better that it is accepted now rather than waiting for respondent to file an appeal and pray for setting aside of ex-parte decree at a later stage.

6. In this view of the matter, I am of the view that no interference in the impugned order is called for. Writ petition deserves to be dismissed. Writ petition is dismissed with costs. Rule discharged.

(S. B. SHUKRE)
JUDGE