

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6797 OF 2014

Mr. Anant Janardhan Deshpande. ... Petitioner.
Versus
Mrs. Sulbha Vijay Deshpande & ors. ... Respondents.

Mr. Arvind P. Purohit, advocate for petitioner.

Ms. Nutan Moily, advocate for respondent No. 6.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 20, 2017**

P.C.:

1 Heard the learned Counsel for the petitioner and learned Counsel for the respondent No. 6.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner happens to be the plaintiff in Special Civil Suit No. 379 of 2010 pending before Civil Judge, S.D. at Pune. The

respondents herein are the defendants in the said suit. The suit was filed on 22/2/2010. The summons in the said suit were issued on 3rd March, 2010. The original defendant No. 6 had received the suit summons on 6th March, 2010 and on 15th March, 2010 notices were issued to the respondent Nos. 1 to 6 informing them of the date of hearing of the application below Exh. 5. On 29/3/2010 the application filed below Exh. 5 was allowed against the Defendant Nos. 5 and 6. It is pertinent to note that the said order was not challenged by filing any miscellaneous civil appeal and hence, the order passed below Exh. 5 had attained finality.

4 On 23/8/2012 a notice was issued to defendant No. 6 to place on record the alleged sale deed executed between the defendant Nos. 1 and 5 by which the suit property was sold to the defendant No. 6. On 19/10/2013 defendant No. 6 had caused his appearance in the civil suit. On 19/10/2013 the application was filed by the defendant No. 6. On 29/3/2010 an order was passed by the learned Judge saying that the suit to proceed exparte. However, the said order was

not challenged and on 19/10/2013 i.e. practically after more than 3 and half year i.e. 1400 days, the defendant No.6 had filed an application seeking the relief of setting aside the exparte order.

5 The learned Counsel for the Petitioner submits at this stage that on 19/10/2013 the plaintiff has filed his affidavit of evidence and thereafter an application was filed by the defendant No. 6 under Exh. 101 seeking the relief of setting aside the order dated 29/3/2010. On 15/3/2014 the plaintiff had filed his reply and on 1/7/2014 the learned Civil Judge, S.D., Pune had passed an order which reads as follows :

“Granted on cost of Rs. 5,000/- out of which Rs. 3,000/- to be deposited to District Legal aid Committee.”

6 The learned Counsel for the petitioner rightly submits that the order dated 1/7/2014 is cryptic in nature and that the learned Court has not assigned any reason for allowing the application which was not only filed at belated stage, but there was no plausible explanation for the inordinate delay in filing the said application. It is pertinent to

note that all that is stated in the application seeking condonation of delay is that due to old age, his father could not apprehend legality pertaining to service of summons and that the father of the defendant expired on 24/3/2012. Another reason assigned by the applicant was that the advocate, after consultation had demanded certain papers for preparing and filing written statement on behalf of the defendant. In any case, that cannot be a reason to show that the defendants had exercised due diligence.

7 There is absolutely no doubt that the order passed by the learned Civil Judge, S.D., Pune is a cryptic order. No reasons are assigned for setting aside the exparte order. In fact, the order passed below Exh. 5 had attained finality. The delay is not explained although the application seeking setting aside of the order was filed after 1400 days. The impugned order was passed exparte on 29/3/2019 and the application seeking aside the order dated 29/3/2010 was filed on 9/10/2013. There is no doubt that it caused prejudice to the plaintiff. The limitation for setting aside the exparte

order is 30 days and while seeking condonation of delay, the applicant has to show sufficient cause or reasons for condoning the delay and it would be discretion of the court to set aside the exparte order. In the present matter, it is not only cryptic but an order which cannot be sustainable in the eyes of law. It does not show that the objections by the plaintiff were considered, neither it shows that the application was granted on sympathetic ground. It is doubtful as to whether the learned Court had gone through the contents of the application filed by the defendant No. 6 as well as the Plaintiff.

8 In the case of **Aditya Hotels (P) Ltd. v/s. Bombay Swadeshi Stores Ltd. and ors. reported in 2007(14) SCC 431**, the Hon'ble Apex Court has held as follows :

In support of the appeal, learned counsel for the appellant submitted that after amendment to Order VIII of the Code of Civil Procedure, 1908 (in short the 'Code') w.e.f. 1.7.2002, the defendant is granted 30 days time to present the written statement. The period is to be reckoned from the date of service of summons. However, the proviso to the said provision permits extension of time when the Court is satisfied about the existence

of reasons to be recorded in writing. It is submitted that neither the trial Court nor the High Court indicated any reason justifying the extension of time.

9 In view of the above, there can be no other conclusion but to set aside the order dated 1/7/2014 passed by the learned Civil Judge, S.D., Pune and the trial Court is further directed to consider the application seeking setting aside the exparte order and also consider the objections raised by the plaintiff and decide the application on its own merits in accordance with law.

10 Rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)