

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

WRIT PETITION NO. 11281 OF 2013

Mr. Hafiz Mohammad Eqbal Shaikh. ... Petitioner.
Versus
Mr. Babu Krishnamohan Debnath & ors. ... Respondents.

Mr. P.B.Shah i/b. Mr. Kayval P. Shah, advocate for petitioner.

Mr. Vivek V. Salunke, advocate for respondent Nos. 1 and 2.

**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 respondents.

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

3 The Petitioner herein happens to be the original defendant No.
4 in Special Civil Suit No. 1648 of 2007. The suit summons was served on 23/4/2010 vide registered A/D and the said fact is

supported by the stamp on the envelope annexed alongwith affidavit in reply. On 8/7/2010 the learned Trial Court had directed the suit to proceed exparte against the defendant No. 7. It appears that the plaintiff had filed an application seeking impleadment of defendant No. 7. The said application was allowed on 2/9/2008. Amendment was carried out with the permission of the court on 18/6/2010. The summons was received by the Petitioner on 19/6/2010 and on 8/7/2010 the learned Court had directed that the suit shall proceed exparte against the defendant No. 7.

4 On 16/8/2010 the petitioner appeared in the matter and had filed an application for setting aside the exparte order contending therein that office boy/peon i.e. Mr. Ghansham had accepted the summons and had not informed the petitioner about the same. On 25/8/2010 the plaintiffs had raised objection about the contention raised in the application seeking setting aside exparte decree and therefore, the learned Civil Judge, S.D. had directed the Petitioner to file affidavit of the peon. Mr. Ghansham has filed his affidavit. The signature on the affidavit appeared to be at variance from the

signature received from the suit summons and the said objection was raised by the plaintiff. On 18/9/2010 the plaintiff had prayed for cross-examination of Mr. Ghanshyam Chavan. The said application was rejected. It appears that defendant No. 7 had filed a subsequent affidavit stating therein that it was not Mr. Ghanshyam Chavan but it was his manager Mr. Imtiyaz Shaikh, who had accepted the suit summons and signed the acknowledgement. It was supported by the affidavit of Imtiyaz Shaikh.

5 In the meanwhile on 4/1/2011 the suit was transferred to another court and on 19/6/2012 the subsequent court had rejected the application seeking setting aside of the order to proceed exparte. On 1/8/2012 the advocate representing the defendant No. 7 was changed and through different advocate i.e. Mr. Anand Chanodia an application for extension was filed below Exh. 67. Similarly another application was filed by the defendant No. 7 under Order 7 Rule 11 contending therein that the suit be dismissed for want of deficit stamp fee and also on the ground of limitation. The said application were rejected.

6 It is pertinent to note that the learned Civil Judge, S.D. in the earlier order dated 28/6/2012 had specifically observed that similar application praying similar relief was rejected by the learned Predecessor of this Court on 19/6/2012 vide order below Exh. 53A.

7 The learned Counsel for the respondents vehemently submits that the order dated 19/6/2012 was not challenged and hence had attained finality and therefore, subsequent application filed on 3/8/2012 was not maintainable. It is further submitted that the suit is pending for the last 10 years. It is also submitted that the application filed by the plaintiff to cross-examine the office boy has been rejected.

8 In any case, as on today, it would not be necessary since there are two inconsistent affidavits filed by the defendant No. 7. It is taking different stands at each times and in the eventuality that the plaintiffs files an application seeking proper judicial intervention, the

learned Court shall consider the said application on its own merits and decide the same within 4 weeks.

9 It is pertinent to note that impugned order dated 28/6/2013 has been impugned in this Writ Petition which is filed on 11/10/2013. By an order dated 18/12/2013 this Court (Coram : R.M Sawant, J) had granted ad-interim relief in terms of prayer clause (c) by which further proceedings in Special Civil Suit No. 1648 of 2007 pending before the Civil Judge, J.D., Pune were stayed.

10 It is apparent on the face of the record that the Petitioner has not only been not diligent in prosecuting the said suit but has chosen to take different stands at different stages on a very trifling issue as to whether he had learnt about impleadment and receive the suit summons as contended by the plaintiffs. The learned Civil Judge, S.D. shall make every endeavour to conclude the proceedings in Special Civil Suit No. 1648 of 2007 by 30/10/2018. The petitioner deserves to be saddled with the cost and be permitted to defend the suit as he had been impleaded subsequently i.e. almost after one year

of filing the suit. The application was filed to implead the present petitioner on 2/9/2008 although the suit was filed in the year 2007. In these circumstances following order is passed to meet the ends of justice.

ORDER

(i) The Writ Petition is allowed.

(ii) The orders dated 19/6/2012 and 28/6/2013 are hereby quashed and set aside.

(iii) The learned Civil Judge, S.D., Pune shall accept the written statement of the defendant No. 7, in the eventuality, it is filed on or before 18/12/2017. It shall be subject to the condition that the petitioner deposits a cost of Rs. 10,000/- on or before 13/12/2017. The cost is to be deposited before the Court of Civil Judge, S.D. at Pune.

(iv) The respondent No. 1/Plaintiff is at liberty to make an application seeking withdrawal of the cost amount.

(v) The Rule is made absolute in the above terms and Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)