

psv

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

**CIVIL APPLICATION NO.2405 OF 2017
IN
WRIT PETITION NO.6717 OF 2009**

Harish Kumar Narang	..Applicant
In the matter between	
Harish Kumar Narang	..Applicant
Vs.	
Rajni Tahil Bhabhwani	..Respondent

Mr.V.Y. Sanglikar for Applicant.
Ms.Hemali with Mr.Panicker i/b. M/s.Ajay Law Associates for
Respondent.

**WITH
CAW NO.319 OF 2017**

CORAM : G.S. KULKARNI, J.

DATE : 15th DECEMBER, 2017

P.C.:

Heard Mr.Sanglikar, learned Advocate for the
applicant, and Mr.Panicker, learned Advocate for the respondent.

2. Though this application was appearing on board and it
is pending for some time, no reply affidavit has been filed.
Therefore, it is to be taken that the contents of the application are
admitted by the respondent.

3. What is glaring is that when this Court passed the order on 26.09.2017 the court was not informed by learned Advocate for the respondent of the intimation of Mr.Sanglikar, learned Advocate for the applicant, in writing to the learned Advocate for the respondent, not to move any application in the matter on 26.09.2017. When such intimation was to the knowledge of learned Advocate for the applicant, then in absence of any serious urgency, this intimation ought to have been on record or atleast the Court should have been informed of reason of non-appearance of Mr.Sanglikar, learned Advocate for the applicant. The Court accordingly in the absence of the applicant being represented passed the order on 26.09.2017.

4. The record clearly indicates that on all the earlier occasions prior to the passing of the order dated 26.09.2017, the applicant was represented and also whenever learned Advocate for the respondent was not available, appropriate accommodation was made. The orders dated 03.04.2017, 07.06.2017 and 04.09.2017 are a clear indication supporting the contention of Mr.Sanglikar.

5. Mr.Panicker learned Advocate for the respondent, however, was unable to justify as to why the fact of Advocate for the applicant not appearing on 26.09.2017 was not informed to the Court, when it was clearly to the knowledge of learned Advocate for the respondent as noted above.

6. Mr.Sanglikar, learned Advocate for the applicant, submits that the order dated 26.09.2017 is admittedly passed

without hearing the applicant and therefore, is required to be recalled.

7. I find much substance as urged on behalf of the applicant. A perusal of the order dated 26.09.2017 clearly indicates that the applicant was not heard and the case of the applicant could not be considered before passing the order. It will be therefore appropriate and in the interest of justice that the order dated 26.09.2017 is set aside.

8. Mr.Sanglikar, however, in all fairness would point out that his client in pursuance of the said order has deposited an amount of Rs.25,000/- per month with effect from 1st January 2017 upto March 2018. If that be the case, then that part of the order need not be disturbed.

9. Subject to the above observations, the order dated 26.09.2017 is set aside.

10. Civil Application is allowed in the above terms. Costs of Rs.15,000/- to be paid by the respondent to the applicant within a period of two weeks from today and shall be condition precedent for proceeding further in this matter.

11. List the other applications after eight weeks.

[G.S. KULKARNI, J.]