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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 21 OF 2017
WITH
CIVIL APPLICATION NO. 24 OF 2017

Rambahadur Thakurdeen Singh	...Appellant
<i>Versus</i>	
Jiledar Ramraj Jaiswar	...Respondent

Mr Inderjeet Yadav, *for the Appellant.*
Mr VR Tripathi, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 19th June 2017

PC:-

1. The Appeal is directed against an order dated 21st November 2015. The Defendant filed a Notice of Motion to set aside an *ex parte* judgment and decree dated 21st April 2015. He explained before the Trial Court that the failure to oppose and defend the Suit was inadvertent. In the course of transfer of as many as 38,000 Suits from the original side of this Court to the City Civil Court pursuant to the 2012 increase in pecuniary jurisdiction, the Plaintiff lost sight of the present matter. He also said that because he was away attending a marriage ceremony in his village and could not appear on the scheduled dates.

2. In paragraph 14 the learned Judge referred to the roznama to say that from 2012 till 2015 the Defendant remained absent. That may be true. What the Court ought to have done was to put the Defendant to some terms, either by imposing costs or by imposing a strict time-frame for filing of the written statement and not permitting further adjournments. But to send a party out of Court without being heard and to allow him to suffer a decree for possession seems to me to be altogether too harsh in the circumstances.

3. I note that in the Appeal, on 20th January 2017, MS Sonak J imposed costs of Rs. 50,000/- as a precondition. The Appellant/original Defendant has already deposited that amount.

4. The Respondent will be at liberty to immediately withdraw the entire amount of Rs. 50,000/- without security. The Appeal is allowed by setting aside the order dated 21st November 2015. I will also allow the Defendant's Notice of Motion and set aside the *ex parte* judgment and decree dated 21st April 2015. The Short Cause Suit No. 9514 of 1999 is restored to file.

5. The learned Advocate for the Appellant/original Defendant confirms that he has already filed his written statement. He also undertakes to this Court that he will not under any circumstances seek an adjournment from now until final disposal of the Suit, subject only to just exceptions. Attending a marriage does not qualify as a just exception. The Trial Court will be entitled to refuse the adjournment, proceed in the absence of the original Defendant,

impose exemplary costs, or any combination of any of these, and the Defendants agrees and undertakes that he will have no grievance on that score. The Defendant confirms that he is being allowed this opportunity as an indulgence, not as a matter of right, and that no abuse of this indulgence will be tolerated under any circumstances.

6. The parties will appear before the Trial Court on 17th July 2017. The Trial Court will issue directions for the disposal of the Suit on merits and fix a schedule.

7. The Appeal from Order is disposed of in these terms.

8. The Civil Application is disposed of as infructuous.

(G. S. PATEL, J)