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

WRIT PETITION NO.2916 OF 2018

Ravi Kripalsingh Talreja ... Petitioner
V/s.
Veen C. Gyanchandani Alias
Leena M. Chandiramani, ... Respondents.

Ms. Minal J. Chandwani, for the Petitioner.
Ms. Veena, for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 28th MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for the respondents.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 3rd February, 2018, passed by the Civil Judge Junior Division, Ulhasnagar, below the Application filed by the petitioner for setting aside the exparte order, passed in a suit bearing R.C.S. No.11 of 2015.

3] The perusal of the order passed by the trial Court and the certified copies of Bailiff reports, which are filed by learned counsel for respondent clearly go to show that the petitioner has made every effort to avoid the service of summons, though it was repeatedly

issued by the trial Court.

4] The suit is filed in the year 2015 and since then various steps were taken by the respondent for service of summons on the petitioner. The very first bailiff report dated 31.1.2015 goes to show that when the bailiff came for service of summons, the petitioner's mother informed that the petitioner is not residing there. However, the address of the petitioner given in this writ petition is of the same premises where the bailiff had gone.

5] In view of the said report, the respondent applied for service of summons under Order V Rule 20 of the Code of Civil Procedure on 26.6.2015 alongwith the affidavit. Thereafter one more application was also filed for service of summons under Order V Rule 17 of C.P.C. alongwith the affidavit. Thus repeated efforts were made to get the petitioner served. However, the petitioner did not allow those efforts to be successful.

6] Ultimately only on 3.10.2015, when the bailiff went to the spot for service of notice, the petitioner was very much present there, but after seeing respondent and the bailiff, petitioner started leaving the spot in haste, when respondent tried to stop the petitioner, he ran away from that spot. However, on the next day, petitioner came to the bailiff room and at that time when he was asked to accept the summons, he refused to accept the same and as a result, bailiff was

constrained to file his detailed report on the basis of which the trial Court has passed the order of suit to proceed exparte.

7] It is pertinent to note that the petitioner was thus very much aware of not only filing of the suit, but also various steps taken by the respondent for service of summons on him. However, for three years thereafter, he avoided to appear in the suit, allowed the suit to proceed exparte and only when respondent filed her affidavit in evidence, he has appeared in the trial Court to set aside the exparte order.

8] It is pertinent to note that the petitioner is a practicing advocate in the said Court and despite that if he is adopting such tactics and the ways of dodging the service of summons and then kept silent for a period of 3 ½ years, even after coming to know about the exparte order and only when the respondent has filed affidavit in lieu of examination-in-chief, he is coming before the Court with vague application, without giving any reason worth the name as to why he did not appear in the suit earlier, the trial Court was perfectly justified in rejecting the petitioner's application. Hence as a matter of fact no interference is warranted in the impugned order.

9] However, it is pointed out by learned counsel for the petitioner that the suit filed before the trial Court is for seeking damages of Rs.5,00,000/- towards defamation and the petitioner

being practicing advocate, the petitioner be given an opportunity to contest the suit so as to clear his name.

10] In my considered opinion, therefore, only in the interest of substantive cause of justice, so that the matter would be decided on merits, this Court is inclined to set aside the exparte order by allowing this writ petition, but it subject to heavy and exemplary costs of Rs.1,00,000/- for which learned counsel for respondent is also agreeable and which will act as deterrent for others also, who are working in the legal field, but try to scuttle the course of justice.

11] Accordingly writ petition is allowed.

12] The impugned order passed by the trial Court is quashed and set aside subject to petitioner's paying/depositing costs of Rs.1,00,000/- (Rupees one lac only) to the respondent, within two weeks from the date of this order.

13] Needless to state that in case of failure on the part of petitioner to pay/deposit costs within the stipulated period, this order will stand automatically vacated without further reference to this Court.

[DR.SHALINI PHANSALKAR-JOSHI, J.]