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

**APPEAL FROM ORDER NO.227 OF 2017
WITH
CIVIL APPLICATION NO.305 OF 2017
IN
APPEAL FROM ORDER NO.227 OF 2017**

State of Maharashtra Through the Chief Electoral Officer Mantralaya, Mumbai	...	Appellant
V/s. Prag Computer Services, Mahim, Mumbai	...	Respondent

Mr. Pradeep Rajagopal a/w Ms. Drishti Shah i/by
Rekha Rejagopal, for the appellant.
Mr. Akshay Gosavi, for respondent respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 14th SEPTEMBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondent.

2] This appeal takes an exception to the judgment and order dated 20th January, 2017, passed by the III Joint Civil Judge, Senior Division, Pune thereby dismissing the M.A.No.969 of 2015, filed by the present appellant under Order IX Rule 13 of Code of Civil Procedure for setting aside the exparte judgment and decree dated

14.8.2014, passed in Special Civil Suit No.1913 of 2009.

3] Learned counsel for the appellant fairly concedes that the appellant has received the summons of the suit. However, the appellant being the Election Commission, was fully and totally occupied in preparation of the two elections and that were of the Parliament and Assembly, which took place in the year 2014. As in the said election process, the entire staff of the appellant was busy, the appellant could not appear in the suit and therefore, the exparte judgment and decree came to be passed against the appellant.

4] The second ground advanced was that the trial Court had allowed the application for amendment of the plaint in the said suit, thereby enhancing the suit claim from Rs.41 lacs along with interest to Rs.25 crores alongwith interest and it was done without issuing notice to the appellant. It was, therefore, submitted that on this count also the exparte decree passed against the appellant was required to be set aside. It is submitted that the trial Court has also permitted the second amendment in the plaint for correction in the name of the appellant that is from "C.E.O.,Maharashtra" to "State of Maharashtra, through it's CEO". Hence it was also a sufficient ground for setting aside the exparte decree. The trial Court has, however,

rejected the said application, Learned counsel for appellant, therefore submits that it has become necessary to interfere in the impugned order passed by the trial Court.

5] Per contra, according to learned counsel for respondent the summons of the suit was served on the appellant on 22nd February, 2010. The service of summons being not disputed, the appellant was expected to appear before the trial Court. The reason given for non appearance is not at all sufficient. The trial Court has considered that there is no pleading that the entire staff of the appellant was busy or occupied in the election process. The word, “entire” was subsequently introduced in the affidavit and hence the said explanation is not sufficient.

6] As regards the amendment of the plaint, it was submitted that the first amendment was allowed under Section 153 of the Code of Civil Procedure, it being a minor one; whereas the second amendment was only for correction in the name of the appellant, from “C.E.O.,Maharashtra” to “State of Maharashtra, through its CEO”. It was submitted that when the appellant has chosen not to appear in the suit despite service of the summons, there was no reason to issue notice to the appellant again. Thirdly, it was submitted

that various letters were issued to appellant for production of the document and some staff from the appellant has appeared and produced the documents. Therefore, it cannot be said that the appellant was not at all aware about the dates of hearing of the suit. According to learned counsel for respondent, therefore, the trial Court was justified completely in rejecting the application filed by the appellant for setting aside the exdparte decree.

7] To substantiate this submission, learned counsel for respondent has relied upon the judgment of this Court, in the case of **The Additional Commissioner of Sales Tax -vs- Kayani Bakery, Pune in Notice of Motion No.891 of 2016 in MVAT Appeal (Lodging) No.10 of 2016**, wherein this Court has observed that,

“Though certain amount of latitude in cases where Government is a litigant, is not impermissible, as the State represents collective cause of the community and what ultimately suffers is public interest, necessitating adoption of pragmatic approach to do substantive justice, however, in case of gross delay and inaction, it becomes difficult to put a State on high pedestal, so as to be immune to the consequences of the inaction”

8] It is submitted that no separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to

prove sufficient cause. Hence merely because applicant is a State, exparte decree cannot be set aside.

9] However, in my considered opinion, the facts of the present case are totally different. Here in the suit it may be true that the appellant has received summons of the suit in the year 2010 and in response thereto, the appellant has not appeared in the trial Court, however, when the respondent has filed an application for amendment of the plaint on 18th March, 2011 for enhancement of the suit claim from Rs.41 lacs alongwith interest to Rs.25 crores alongwith interest, it was incumbent on the part of trial Court to issue notice to the appellant before allowing such amendment. Merely saying that the amendment was allowed under Section 153 of the Code of Civil Procedure, cannot be a answer, especially when there is drastic change in the suit claim which is enhanced to such huge extent. The fact that notice of this amendment was not given to the appellant is in itself, in my considered opinion, sufficient ground to set aside the exparte judgment and decree passed in that suit.

10] Apart from that even the second application for amendment was aslso allowed by the trial Court without issuing notice to the appellant, when it was for the change in the name of the

appellant and to correct the same. Both these grounds are more than sufficient to set aside the exparte decree granted against the appellant.

11] Moreover, this is also not the case wherein the appellant has not offered sufficient explanation for it's non appearance in the suit. It is a matter of record that general elections of Parliament and also of the Legislative Assembly were held in the month of April-May, 2014 and October, 2014, respectively. The Court can also take judicial notice of the fact that the staff of the Election Commission is fully occupied during the elections and this ground can be definitely considered as sufficient cause for non appearance of the appellant in the trial Court.

12] Whatever it may be the fact remains that substantive cause of justice requires that appellant be given an opportunity to contest the suit on merits, as the notice of the amendment applications was not served on the appellant. In view thereof, the impugned order passed by the trial Court is required to be set aside, thereby allowing the suit to be restored to its original file. To protect the interest of the respondent, this Court can also direct the trial Court to decide the suit as expeditiously as possible.

13] Accordingly, the appeal is allowed. The impugned order passed by the trial Court is set aside.

14] As a result, the application filed by the appellant for setting aside the exparte judgment and decree is allowed.

15] The suit is restored to it's original file.

16] The trial Court to decide the suit as expeditiously as possible and preferably within a period of one year.

17] In view of disposal of Appeal, Civil Application no more survives and the same is accordingly disposed off.

18] The parties to act on the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]