

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

APPEAL FROM ORDER NO. 958 OF 2016

The State Bank of India

.. Appellant.

Vs.

J.V. Gokal Finance and Investment
Private Limited and Ors.

.. Respondents

Ms. Jyoti Tiwari-Patkar for the Appellant.

Mr. Aditya Shiralkar a/with Advocate S.M.Seegarla I/by RMG Law
Associates for the Respondents.

CORAM : M.S. SONAK, J.

DATE : 13th August 2018.

P.C: -

- 1) Heard Ms Jyoti Tiwari-Patkar, the learned Counsel for the appellant and Mr. Aditya Shiralkar, the learned Counsel for the respondents.
- 2) The challenge in this appeal is to the order dated 8th February, 2016 by which the learned Trial Judge has refused to condone the delay in setting aside the ex-parte decree and further, even on merits held that there is no case made out to set aside the ex-parte decree.
- 3) Ms. Patkar, the learned Counsel for the appellant submits that the Advocate for the appellant had undergone a by-

pass surgery and was advised rest for a period of one year. She points out that necessary praecipe had been circulated requesting the Courts in which the said Advocate was appearing to defer the matters by one year. She points out that most of the Courts did defer the matters by one year. She points out that it is only one or two Courts proceeded to make ex-parte orders. She also submits that the matter was also transferred from Court Room No.31 to Court Room No.3 and there was no sufficient notice as regards such transfer. She submits that the appellant is the public banking institution and therefore, the issue of condonation of delay ought to be liberally construed insofar as the appellant is concerned. For all these reasons, Ms Patkar submits that the impugned order warrants interference.

4) Mr. Shiralkar, the learned Counsel for the respondents points out that the Advocate for the appellant underwent a bypass surgery on 16th June, 2013 and was advised rest till 15th October, 2013. He submits that these are the statements made in Paragraph No. 5 of the affidavit in support of notice of motion. He placed on record Roznama to indicate that right from 29th November, 2012, Advocate for the appellant had stopped attending the Court. He

points out that there is absolutely no explanation for the appellant, through their Advocate or otherwise, for not attending the proceedings right from 29th November, 2012 onwards. He points out that even after the copy of the affidavit-in-evidence was served upon the appellant, the appellant failed to appear before the Court. He therefore submits that this is not a case where sufficient cause can be said to have been shown. Mr. Shiralkar submits that there is absolutely no any jurisdictional error or illegality in the impugned order.

5) Rival contentions now fall for my determination.

6) There is no dispute that in the present case, the appellant was duly served with the suit summons for settlement of the issues before the Trial Court. The appellant has in fact even filed a written statement in the matter. From 29th November, 2012 onwards, the Roznama indicates that the matter was taken up on 19/1/2013, 21/3/2013, 9/4/2013, 30/7/2013 and 5/9/2013. On all these dates neither the appellant neither their Advocates appeared.

7) Even if the non-appearance on 30th July, 2013 is to be excused since the Advocate for the appellant had undergone a

bypass surgery on 16th June, 2013, there is really no explanation for the non-appearance of the appellant or their advocate on the three dates between 29th November, 2012 and 30th July, 2013.

8) In terms of the averments made in Paragraph no.5 of the affidavit, the Advocate for the Appellant was advised rest till 15th October, 2013. The matter thereafter appeared on 25/11/2013, 22/1/2014, 12/2/2014, 18/2/2014 and 25/4/2014. Again on all these dates neither the appellant nor its Advocate appeared in the matter.

9) On 12th March, 2014 the Roznama records that the plaintiffs filed affidavit of service and even the copies of the affidavit of service were served upon the appellant. Despite that, there was no appearance on behalf of the appellant. It is true that the matter stood transferred from one Court Room to the other. However, that does not mean that the appellant could remain absent on several dates which followed. Ultimately, the ex-parte decree was made on 26th August, 2014.

10) Even if we were to accept that the appellant's Advocate had sufficient cause not to appear between 16th June, 2013 and 15th October, 2013, still there is no explanation whatsoever for the

absence on several dates before this period as well as after this period. No praecipes can be filed in Courts to defer all matters in which the Advocate is appearing, by period of one year. If it is not possible for the Advocate to attend to a matter for long periods then it is for the appellant to make some alternate arrangements.

11) It is true that 'sufficient cause' is to be liberally construed. However, that does not mean that inordinate delay of whatsoever nature may simply be condoned in the absence of proper sufficient cause to be shown. The learned Trial Court has taken into consideration all these factors in the proper perspective and there is no error as such which warrants interference.

12) For the aforesaid reasons, this appeal is dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)