

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

WRIT PETITION No.1452 OF 2017

Ramanlal Chunilal Sugandhi

... Petitioner

Vs.

Shri Bhagwandas Chunilal Sugandhi

... Respondent

Mr.Abhishek Pungliya for the Petitioner

Ms.Neha Bhide for the Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 1, 2018**

P.C. :

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. This petition is directed against the order dated 22.8.2016 by the learned Civil Judge Senior Division, Pune, below exhibit 30 in Special Civil Suit No.127 of 2015. The application was made by the petitioner/defendant for setting aside the ex-parte order in Special Civil Suit No.127 of 2015 passed under Order 9 Rule 6 of the Civil Procedure Code against him on 13.10.2015. He moved an application for setting aside the said order on 26.4.2016 nearly after six months of the impugned order. The said application was

contested by the respondent/plaintiff, however, the learned Judge rejected the said application.

3. The learned Counsel for the petitioner/original defendant has submitted that the present respondent/original plaintiff is his real brother, who has filed another suit i.e., 126 of 2015 for specific performance and in the said suit, he has filed written statement on 28.9.2015. He submits that the petitioner/defendant did not receive notice or summons in the present Suit No.127 of 2015, which was filed by the respondent/plaintiff for declaration and injunction. The learned Counsel, therefore, submitted that he could not appear in the Special Civil Suit No.127 of 2015 and the ex-parte order was passed. He has submitted that the trial Court ought to have considered these facts and should have allowed his application.

4. The learned Counsel for the respondent while opposing this petition, has relied on his affidavit in reply. She has highlighted that the petitioner/defendant has lied before the trial Court and made false submissions and, therefore, the trial Court has rightly rejected the said application.

5. Perused the impugned order so also the documents placed before the Court. The learned trial Judge has stated that in the judgment given by the revenue authority dated 22.12.2015, the present petitioner was a party and there is a reference to the Special Civil Suit No.126 of 2015 and Special Civil Suit No.127 of 2015. The said judgment was passed by the revenue authority on 22.12.2015. The trial Judge has rightly drawn inference that the petitioner/defendant had knowledge of filing of Special Civil Suit No.127 of 2015 in the month of December itself, however, he has made false statement that he derived knowledge of filing of the said Suit on 20.4.2016. The observations of the trial Judge that he made false statement, cannot be disputed at this stage. Hence, the reasoning given also cannot be said to be wrong. However, the other factors are also to be taken into account that the respondent/plaintiff has filed suit against the petitioner, who is his real brother, and fighting for the property in Suit No.126 of 2015. The present petitioner has appeared and filed written statement and is contesting the said suit. There is a delay of nearly 4 to 5 months and there is no much progress in the said suit.

6. In this view of the matter, in the interest of justice, the order to proceed ex-parte against the defendant which was passed on 13.10.2015 is required to be set aside. Accordingly, the following order is passed:

- i) Writ Petition is allowed.
- ii) The impugned order dated 22.8.2016 as also the *ex-parte* order dated 13.10.2015, are quashed and set aside, on condition that the petitioner will pay costs of Rs.30,000/- to the respondent on or before 7.8.2018.
- iii) The parties to appear before the trial Court on 7.8.2018 at 11am and cooperate. The petitioner to file his written statement on the same date.

7. Writ Petition is disposed of on the above terms.

(MRIDULA BHATKAR, J.)