

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.33794 OF 2018

Sanjay Ajitsinh Bhatia and Another ...Petitioners

vs.

Sheth Shri Hansraj Ladha Charity Trust
and Others

...Respondents

Mr. Sanjay A. Bhatia, the Petitioner No. 1 in person.

CORAM : M. S. SONAK, J.

DATE : NOVEMBER 30, 2018

P.C.:

. Heard Mr. Sanjay Bhatia, the Petitioner No. 1 who appears in person.

2. The challenge in this Petition is to order dated 13th November, 2018 by which the Appellate Bench has merely set aside the order marking Respondent Nos. 1, 3 and 5 (original Plaintiffs) *ex parte* and permitting them to file vakalatnama of their advocates and to contest the Petitioners' Revision Application on merits.

3. Mr. Sanjay Bhatia who appears in person submits that the Respondents have no *locus standi* in the matter. This submission is entirely misconceived because in the Revision Application, it is the Petitioners who have impleaded the

Respondents as parties. Therefore, the question of their *locus standi* at least in the Revision Application is completely irrelevant. Mr. Sanjay Bhatia then states that Respondents are not the actual trustees and they have not produced any documents to establish that they are the trustees and therefore *ex parte* order made against them ought not to have been set aside and they be granted leave to defend the Revision Application. Again this submission is misconceived and liable to be set aside for the reasons set out in the preceding para itself.

4. Mr. Sanjay Bhatia states that the lawyer appears for these Respondents before the trial Court was very much aware of the pendency of the Revision Application before the Appellate Bench. He point out the Application seeking to set aside the *ex parte* order and states that there is absolutely no sufficient cause shown there. He submits that being in personal difficulty, is not at all sufficient cause, nor is the fact that some of the Respondents are staying at Borivali.

5. There is absolutely no material on record to impute any knowledge to the advocate. In any case, even presuming that the advocate had any knowledge which cannot be said that such knowledge has to be imputed in the facts and circumstances of the

present case to the Respondents. The Respondents have explained the difficulty as to why they could not remain present and such difficulty has been accepted by the Appellate Bench by passing detail order and after considering over 10 rulings upon which Mr. Bhatia placed reliance. Incidentally, it is required to be noted that Mr. Bhatia is appearing in person, he is otherwise a well qualified advocate. No doubt, it is his right to place reliance by citing several authorities, even for the purpose of opposing the Respondents' plea for the only additional opportunity to contest the Revision Application instituted by Mr. Bhatia. However, it is necessary to note that after considering of the facts on record, the Appellate Bench has exercised discretion, condoned the delay, set aside the *ex parte* order and granted opportunity to the Respondents to contest the Revision on merits. The Appellate Bench has rightly observed that the principles of substantial justice require that such opportunity be granted to the Respondents.

6. There is absolutely no perversity or any reasonableness in the exercise of discretion. Normally, when such discretionary orders are made, Courts exercising extraordinary jurisdiction under Article 227 of the Constitution of India are loathe to interfere. However, delay is not condoned or opportunity to defend

is not granted, then, the scrutiny is more intense. The jurisdiction under Article 227 is to promote justice and not to thwart out the same on the basis of hyper technical and misconceive contention.

7. This Petition is therefore, liable to be dismissed and is hereby dismissed.

8. Since by the impugned order, the Respondents have been directed to pay the Petitioners cost of Rs. 2,000/-, in this Petition as well, the Petitioners are directed to pay the Respondents cost of Rs. 2,000/-.

9. This Petition is therefore dismissed with cost.

10. All the concerned to act on the authenticated copy of this order.

11. The Petitioners are directed to produce the copy of this order before the Appellate bench on the next date.

(M. S. SONAK, J.)