

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2433 OF 2019

Shashikant Laxman Shelar

...Petitioner

vs.

Shabbir Shujauddin Tambawala and Anr.

...Respondents

Mr. S.V. Patil, for the Petitioner

Mr. Vinod Jagtap I/b. Mr. Niranjan Jagtap & Co.. for Respondent
Nos. 1 and 2.

CORAM : R. G. KETKAR, J.

DATE : AUGUST 08, 2019

P.C.:

. The Petition was heard at length on 10th July, 2019. After considering the material on record as also the original record, in paragraph 5 of the said order, it was observed that the Defendant was present in the Court on 13th June, 2006 as also on 26th June, 2006. In his presence, the matter was adjourned for further cross-examination of P.W. 1 to 11th July, 2006. A perusal of the Roznama dated 11th July, 2006 shows that the advocate appearing for the Defendant filed pursis seeking withdrawal of the appearance. The Defendant was not present but his wife was present. The learned trial Judge informed her to engage new advocate by 31st July, 2006. Thus, though the advocate was aware of the date, he did not participate in the trial.

2. The Defendant took out notice under Order IX Rule 13 of Code of Civil Procedure, 1908 (in short C.P.C.) for setting aside the ex-parte judgment and decree dated 31st July, 2006. The learned trial Judge rejected the application on 26th November, 2007. The learned trial Judge dealt with the Roznama of the case as also contention raised by Defendant including that his advocate withdraw appearance without intimation. The learned trial Judge rejected all contentions. Aggrieved by the decision of the trial Court, the Defendant preferred Appeal before the Appellate Court. The Appellate Court dismissed the Appeal on 23rd February, 2017.

3. In view thereof and for the reasons recorded in the order dated 10th July, 2019 no case is made out to interfere in the impugned orders. In paragraph No. 7 of the order dated 10th July, 2019 it was noted that the learned counsel for the Petitioner assured that the Petitioner will hand over the vacant and peaceful possession of the suit premises to Respondent Nos. 1 and 2. However, he still wants two weeks time to file undertaking. It is not possible to give further time. Hence, the Petition fails and the same is dismissed.

(R.G. KETKAR, J.)