

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4538 OF 2014

MUKESH BABAN VISHE AND ANOTHER)...PETITIONERS

V/s.

BHAU JANU MURBADE)...RESPONDENT

Shri. Sachin Pawar, Advocate for the Petitioner.

Shri.Shrishailya S. Deshmukh, Advocate for Respondent No.1.

Shri.A.P.Vanarase, AGP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 4th NOVEMBER 2019

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith.

2 By this petition, defendants have challenged the order dated 30th January 2014 passed by the learned Civil Judge, Senior Division, Murbad, thereby rejecting their application for setting aside exparte order.

3 Heard both sides and perused the impugned order.

4 Respondent had filed suit for specific performance of contract against the petitioners/ defendants. Undisputedly, defendants were served on 21st February 2013 and they appeared before the trial court on 15th June 2013. However, it appears that, subsequently, because of inaction of the defendants, on 31st July 2013, suit was directed to be heard *exparte*. This caused the petitioners/defendants to apply for setting aside of the *exparte* order on 30th November 2013. After hearing the parties, the learned trial court was pleased to reject the application for setting aside the *exparte* order with a reason that there was reasonable time with the defendants to appear before the court and the application for setting aside the *exparte* order was made after filing of evidence affidavit by the plaintiff.

5 Reasons stated for not appearing before the court on due date are to the effect that the defendant no.1 was out of town in connection with his service and the defendant no.2 was ill. Even otherwise, on 15th June 2013, the defendants had appeared

before the trial court, and subsequently, the exparte order came to be passed on an application of the plaintiff. Primary function of the court is to adjudicate the disputes on its own merit and in peculiar facts of this case, I am of the considered opinion that as the defendants had already appeared on 15th June 2013, they deserved a chance to contest the suit, which is for specific performance of the contract. The interests of the plaintiff can be taken care of by imposing some costs on the defendants. Therefore, the order :

ORDER

- i) Rule is made absolute in terms of Prayer Clause (b).
- ii) The impugned order rejecting the application for setting aside the exparte order is quashed and set aside.
- iii) The said application is allowed subject to payment of costs of Rs.20,000/- by the defendants to the plaintiff within a period of three weeks from today.

- iv) On deposit of the costs, the learned trial court to take the written statement of the defendants on record and then proceed to disposed off the suit in accordance with law.
- v) Writ petition is accordingly disposed off.

(A. M. BADAR, J.)