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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4766 OF 2019

Sau. Chaya Murlidhar Mahadik	..Petitioner.
V/s.	
Prabbakar Chintaman Mahadik & Anr.	..Respondents.

Mr.Sanskar Marathe for the petitioner.

Mr.S.M.Sabrad for respondent Nos.1 & 2.

CORAM : N.J. JAMADAR, J.

DATE : SEPTEMBER 24, 2019

P.C. :-

Heard learned counsel for the parties.

2. Challenge in this petition is to the judgment and order dated July 26, 2018 passed by the learned District Judge, Pune in Miscellaneous Civil Appeal No.195/2017, whereby the learned District Judge was persuaded to allow the appeal against the judgment and order dated April 11, 2017 passed by the learned Civil Judge, Vadgaon Maval, Pune in M.A.No.19/2016, by which the learned Civil Judge had rejected the application to set aside the ex-parte decree, dated February 15, 2011, passed in Special Civil Suit No.231/2004.

3. Learned counsel for the petitioner submitted that the learned District Judge was not all justified in interfering with a well reasoned order passed by the learned Civil Judge while rejecting the application under Order IX Rule 13 of the Code of Civil Procedure ('the Code'). It was submitted that the learned District Judge did not advert to the points which were correctly taken into account by the learned Civil Judge, especially, the fact that defendant No.2 was not suffering from any disability and there was no explanation as to why defendant No.2 did not appear before the trial Court for a long period of time of about four years.

4. Upon perusal of the impugned order, it becomes evident that the learned District Judge was impressed by the fact that the testimony of defendant No.2, on the aspect of disability of defendant No.1 went virtually unchallenged. Though some amount of indolence was found on the part of defendants, the learned District Judge was of the opinion that the genuine ground of inability to appear before the trial Court could not be discarded. The learned District Judge, in the facts of the case, has taken a view which advances the cause of justice. Thus, on merits, no interference is warranted in the impugned order.

5. Learned counsel for the petitioner would urge that imposition of costs of Rs.2,000/- was wholly disproportionate to the time lag and efforts on the part of the petitioner in securing the decree in Special Civil Suit No.231/2004. In response thereto, learned counsel for the respondents submitted that the respondents are not averse to paying enhanced costs and even expedite hearing and disposal of Special Civil Suit No.231/2004.

6. In view of the aforesaid submissions, the interest of justice would be met if the impugned order, to the extent of costs, is modified and the trial Court is directed to dispose of the suit expeditiously.

7. Thus, in view of the concession on behalf of respondents, the impugned order stands modified to the extent that the costs of Rs.12,000/- instead of Rs.2,000/- be paid by the respondents to the petitioner within a period of four weeks from today. The costs be deposited before the Court in which Special Civil Suit No.231/2004 is pending adjudication.

8. The learned Civil Judge shall make an endeavour to hear and decide Special Civil Suit No.231/2004 as expeditiously as possible and, preferably, within a period of

eight months from the date stipulated for the appearance of the parties before the trial Court.

9. The parties shall appear before the trial Court on November 4, 2019 and, in that event, it may not be necessary to issue notices to the parties.

10. The petition stands disposed in the aforesaid terms.

(N.J. JAMADAR, J.)