

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10214 OF 2019

Dr.Arnab Mukharjee .. Petitioner
Vs.
Dr.Batra Positive Health Clinic Private Limited .. Respondent

Mr.Samir Sarambalkar, for the Petitioner.
Ms.Deepa Kamath, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE : 24th SEPTEMBER 2019

P.C. :

- . Not on board. Taken on board.
2. By consent, Petition is decided finally at the stage of admission.
3. Heard learned Counsel for the petitioner.
4. The petitioner is the original defendant. The plaintiff filed Summary Suit in the year 2014 for recovery of sum

of Rs.4,00,000/- along with interest from the defendant. Despite service of suit summons, defendant did not appear. The trial Court was constrained to pass order that the Suit would proceed exparte against the defendant. Thereafter, Notice of Motion is filed for setting aside exparte order passed against the defendant. The trial Court rejected the Notice of Motion for want of satisfactory explanation on the part of the defendant for setting aside the exparte order.

5. Learned Counsel for the respondent supported the order passed by the trial Court. According to her, the defendant's approach in filing the written statement is very casual. She invited my attention to the reasons recorded by the trial Court while rejecting the Notice of Motion. According to her, suit summons were duly served on the defendant. She further submitted that despite service of suit summons, the defendant did not bother to appear in the matter. She further would submit that the reasons mentioned by the defendant in the application did not deserve acceptance as the same are not

bonafide.

6. I have gone through the order passed by the trial Court. Summary Suit is filed by the plaintiff for recovery of sum of Rs.4,00,000/- from the defendant. The plaintiffs are Dr.Batras Positive Health Clinic Private Limited. The respondent is a Doctor by profession. It is the contention of the learned Counsel for the petitioner that he was not residing at the address on which suit summons is shown as served. The order to proceed with the Suit exparte against the defendant came to be passed on 05/12/2016. The present Notice of Motion for setting aside exparte order is filed on 22/01/2017. The reason is that the petitioner was not residing at the address on which suit summons was served. Taking into consideration the application is made for setting aside the exparte order and that the defendant, in the facts of the present case, should not be deprived of an opportunity to defend the Suit on merits. In the interest of justice, one opportunity needs to be given to the defendant to file written statement. It is one of the contention

of the learned Counsel for the respondent – plaintiff that the petitioner has not even prayed for setting aside ‘NO WS’ order. Since I am inclined to impose cost, I do not think it appropriate for technicalities to come in the way of justice. The respondent needs to be adequately compensated with cost.

7. The Petition is allowed subject to defendant paying cost of Rs. 10,000/- to the plaintiff within a period of 2 weeks from the date of uploading of this order. The impugned order is set aside. Notice of Motion No. 449 of 2017 is allowed. Written statement to be taken on record which should be filed within 15 days of uploading of this order.

(M.S.KARNIK, J.)

Urmila
P. Ingle

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by Urmila P.
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Date:
2019.10.04
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