

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO.2295 OF 2019

REKHA ASHOK CHAVAN
VERSUS
SHAKUNTALA SUDHAKARRAO KULKARNI AND
OTHERS.

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Advocate for Petitioner : Mr.Jadhav Kailas B.
Advocate for Respondents : Mr.Mandlik Pratap P. For R
No. 4-A To 6, Mr. Kale Mahesh P. For respondent nos.1-3

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CORAM : V.K. JADHAV, J.
Dated: February 28, 2020

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PER COURT :-

1. The petitioner is the original defendant no.4. The petitioner/defendant no.4 has not appeared in the suit, though suit summons duly served on her. By order dated 27.8.2012, the trial Court has passed the ex-parte order as against the petitioner/defendant no.4. On 26.2.2018 the petitioner/defendant no.4 has filed an application Exh.67 for setting aside the ex-parte order, however, by impugned order dated 26.3.2018 the Trial Court has rejected the said application Exh.67. Hence, this writ petition.

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2. The learned counsel for the petitioner submits that the petitioner is a woman and she was not duly served with the notice. As per the report submitted by the Bailiff, notice was served on the brother-in-law of the petitioner/defendant no.4. Learned counsel submits that petitioner/defendant no.4 came to know about the said suit when she had been to the Court to attend the criminal case pending against her. The learned counsel submits that the petitioner/defendant no.4 purchased the property from defendant nos.1 to 3 under the registered sale deed and she is owner in possession of the said property. Learned counsel submits that it is necessary for her to contest the suit.

3. Learned counsel appearing for respondent nos.1 to 3/original plaintiffs submits that suit summons was duly served on the petitioner/defendant no.4, however, she has failed to appear before the Court without any justifiable cause. Petitioner/defendant no.4 has filed an application Exh.67 after six years. The learned counsel submits that suit is part heard and now

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posted for final arguments. Petitioner/defendant no.4 has not shown any reasonable cause for her non-appearance in the Court for six years. Trial Court has rightly rejected the application Exh.67. Learned counsel in the alternate submits that, if, this Court is inclined to allow this writ petition, the petitioner/defendant no.4 be saddled with heavy costs.

4. I have also heard Mr. Mandlik, learned counsel appearing for respondent nos. 4-A to 6/original defendant nos.1 to 3.

5. It appears that the R.C.S. No.32 of 2012 came to be instituted for partition and separate possession in respect of the immovable property and also seeking declaration that registered sale deed dated 6.4.2010 executed by defendant nos.1 to 3 in favour of defendant no.4 is null and void and not binding on the rights of the plaintiffs. So far as the relief of declaration in respect of the suit property is concerned, petitioner/defendant no.4 is directly affected in case, if the said

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relief is granted ex-parte. Apart from this, it also appears that the suit summons was served on the brother-in-law of the petitioner/defendant no.4. I do not think that brother-in-law of petitioner/defendant no.4 is her family member. In view of the same, I am inclined to allow this writ petition, however, the petitioner/defendant no.4 is also required to be saddled with heavy costs for inaction for near about six years. The petitioner/defendant no.4 was attending the criminal case in the same court and said case arose out of the complaint lodged by the plaintiff in respect of the same transaction. Thus, considering the entire aspect of the case, I proceed to pass the following order.

ORDER

- i] Writ Petition is hereby allowed.
- ii] The impugned order dated 26.3.2018 passed by the by the Civil Judge J.D. Manvat below Exh.67 in Regular Civil Suit No.32 of 2012 is hereby quashed and set aside.

- iii] The application Exh.67 in R.C.S. No.32 of 2012 is hereby allowed subject to costs of Rs.15,000/- (Rs. Fifteen thousand) to be paid by the petitioner/defendant no.4 to the respondents/plaintiffs within a period of (o4) Four weeks from the date of this order.
- iv] The Trial Court shall dispose off the suit as expeditiously as possible, however, preferably within a period of **six months** from the date of this order.
- v] Parties shall co-operate the Trial Court in disposing off the suit in a time bound manner as directed by this court.
- vi] Writ Petition is accordingly disposed off.

(V.K. JADHAV, J.)

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