

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8186 OF 2019

Pravin Songya Choudhary

.....Petitioner

Vs.

Smt. Usha Shantikumar Mishra

.....Respondent.

Mr. Rahul Kadam for the Petitioner.

Mr. Abhishek Patil for the Respondent.

CORAM : A. S. GADKARI, J.

DATE : 13th MARCH, 2020.

PC:-

The Petitioner/Original-Defendant has impugned Orders dated 26th June, 2019 passed below Exhibit Nos. 45 and 47 in Special Civil Suit No. 222 of 2013 by the learned 5th Civil Judge, Senior Division, Kalyan, rejecting those Applications for setting aside the Orders of '*No Cross*' of Plaintiff and closure of evidence of Petitioner/Original-Defendant, dated 21st July, 2019 and 2nd September, 2015 respectively.

2 Heard Mr. Kadam, learned counsel for the Petitioner-Original Defendant and Mr. Patil, learned counsel for the Respondent-Original Plaintiff.

3 The record indicates that, as the Petitioner and his Advocate did not remain present to cross examine the Respondent-Original Plaintiff on 21st July, 2019, the Trial Court passed Order of even date of '*No Cross*' of Plaintiff.

When on a subsequent occasion, the Petitioner's Advocate remained absent, the Trial Court passed an Order dated 2nd September, 2015, directing the Suit be proceeded without evidence of Petitioner-Original Defendant.

The Petitioner therefore, filed an Application below Exhibit-45 for setting aside the Order dated 21st July, 2015 and permitting him to cross-examine the Respondents. The Petitioner also filed an Application below Exhibit 47 for setting aside the Order dated 2nd September, 2015 and for allowing him to lead evidence.

As noted earlier, by separate Orders of dated 26th June, 2019, the Trial Court has rejected both the said Applications filed below Exhibits 45 and 47 respectively.

4 A minute perusal of the Application filed below Exhibit-45 for setting aside the Order dated 21st July, 2015 would clearly reveal that, in Paragraph No. 2 of the said Application, a categorical statement has been made by the Petitioner that, even the Suit filed by him bearing Regular Civil Suit No. 506 of 2011 against the Petitioner herein, was dismissed for default by an Order dated 2nd January, 2017, as the Advocate for the Petitioner did not remain present on that day. It is the specific case of the Petitioner that, though his Advocate from time to time informed the further dates, the progress of the case was never informed to him. That, the Advocate for the Petitioner also did not inform about the Orders dated 21st

July, 2015 and 2nd September, 2015 passed by the Trial Court.

5 In view thereof, the findings recorded by the Trial Court in impugned Orders dated 26th June, 2019 passed below Exhibits-45 and 47 that, the reasons mentioned by the Petitioner in his Applications for setting aside the Orders dated 21st July, 2015 and 2nd September, 2015 respectively are not convincing, appears to this Court to be erroneous. As noted earlier, in his Application filed below Exhibits-45 and 47, a sufficient cause is made out by the Petitioner for setting aside the Orders dated 21st July, 2015 and 2nd September, 2015. It is, by now well settled position of law that, due to fault of Advocate, the party/client should not suffer. In the present case, the said dictum of law squarely applies.

6 In view thereof, the Orders dated 26th June, 2019 passed below Exhibits-45 and 47 and Orders passed on 21st July, 2015 and 2nd September, 2019 in Special Civil Suit No. 222 of 2013 by the learned Civil Judge, Senior Division, Kalyan are set aside.

The Petitioner is permitted to cross-examine the Respondent and to lead his evidence in the said Suit. Petitioner is directed not to seek adjournments before the Trial Court and to co-operate with it, in expeditious hearing of the said Suit.

7 Petition is allowed in the aforesaid terms.