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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1555 OF 2020**

Jaycee Construction Co. and Ors. Petitioners.
V/s
Krutika Dinesh Desai Respondent.

Mr. Sahil Mahajan for the Petitioners.
Mr. Abhijit Singh for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 25, 2021

P.C.:-

1] In summary suit No.655 of 2017, Petitioners/Defendants since failed to remain present, suit proceeded ex parte. Chamber Summons No.1104 of 2018 is taken out by the Petitioners/Defendants, praying therein condonation of delay of 284 days in filing vakalatnama in the aforesaid summary proceedings and also for setting aside the ex parte order. The said request is rejected by the Court below vide impugned order dated 16/12/2019. As such, this Petition.

2] Submissions are, because of financial constraints, business of the Respondent-Company was in difficulty and as such at the relevant

time Petitioner could not take appropriate steps in putting their appearance in the aforesaid suit. It is also claimed that some of the Directors of the Petitioner-Firm were behind bars, which has also prompted them not to file appearance. As such, court below has erred in not considering the said issue. The learned Counsel would submit that the date on which the Chamber Summons was dismissed, Petitioners were present in second half as generally Chamber Summons are taken up for hearing in second half of the court working day. As such, he would urge that by putting the Petitioners to reasonable condition, order impugned needs to be set aside, thereby directing the Trial Court to hear the Chamber Summons afresh.

3] The learned Counsel for the Respondent/Plaintiff would support the order impugned inviting attention of this court to various roznamas so as to demonstrate that on the scheduled date of hearing of the Chamber Summons, the Petitioners have chosen to remain absent. According to him, proceedings are governed by Order 37 and as such considering the object, no case for interference is made out.

4] Considered rival submissions.

5] Considering the fact that the suit is tried pursuant to the procedure laid down under Order 37 and under sub-rule (5) of Rule 3 Petitioners will be required to seek leave to defend, this Court has called upon the Petitioners to deposit an amount of Rs 20 lakhs which is principal amount claimed in the suit for recovery. The learned Counsel for the Petitioners, on instructions, submits that Petitioners are not in a position to deposit the said amount. Apart from above, it can be noticed from the order of the court below that the Chamber Summons was registered on December 19, 2018. The Court below has granted last chance on 20/3/2019 and since 28/6/2019, Petitioners have chosen not to appear before the court. As such, considering overall conduct of the Petitioners of not appearing in the summary proceedings in spite of service of suit summons so also not appearing for hearing of the Chamber Summons, in my opinion, no case for interference in extra ordinary jurisdiction is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)