

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL WRIT PETITION NO. 462 OF 2021**

Global Law Offices

... Petitioner

V/s.

The Life Insurance Corporation of India & Ors.

... Respondents

Mr.C.J. Doveson for Petitioner.

Ms.Harsha Asnani i/b. The Law Point for Respondent No.1.

CORAM : A.S. GADKARI, J.**DATE : 23rd August 2021.****PC. :**

1. By the present Petition under Article 227 of the Constitution of India, the Petitioner/Original Respondent No.6, has impugned Order dated 10th January 2020 passed below Exh.44 in Municipal Application No. 19 of 2014 thereby rejecting its application for setting aside ex-parte Order dated 19th January 2015 and to allow it to file written statement and cross-examine witness of the Respondent No.1.

2. Heard Mr.Doveson, learned counsel for the Petitioner and Ms.Asnani, learned counsel for Respondent No.1. Perused record.

3. The record indicates that, the Petitioner is a law firm situated at the address mentioned in the cause title of the Petition. That the Respondent No.1 filed Municipal Application No. 19 of 2014 in the Court of Small Causes

at Mumbai. The summons of the said application was tried to be served through the Bailiff of the concerned Court on the office of the Petitioner on 8th August, 2014, which was refused to be accepted by the employee of the Petitioner, namely, Ms.Amina Satrekor. The bailiff accordingly submitted its report to the Trial Court. The Trial Court thereafter passed Order dated 19th November 2015 to proceed ex-parte against the Petitioner (Original Respondent No.6). The Petitioner filed present application below Exh.-44 on 18th June 2019 for setting aside ex-parte Order dated 19th January 2015 and to allow him to file written statement and cross-examine witness of the Respondent No.1.

4. Mr.Doveson, learned counsel for the Petitioner submitted that, the Petitioner came to know about the said fact of passing ex-parte Order by the Trial Court on 4th June 2019 and thereafter it collected the necessary documents from the Trial Court and filed the said application below Exh.44 on 18th June 2019. He submitted that, the Petitioner was never informed by said Ms.Amina Satrekor that, the bailiff of the Trial Court had been to its establishment for service of summons and for want of specific knowledge of filing of the proceedings by the Respondent No.1 before the Trial Court, the Petitioner could not file its written statement within stipulated period, as envisaged by Order-8 Rule-1 of the Civil Procedure Code. He submitted that, the said lady has thereafter left the job of the Petitioner in the year 2015 itself

and therefore also the Petitioner could not get necessary information about visit of the bailiff to its office premises. He submitted that, due to passing of the impugned Order, the valuable right of the Petitioner to file written statement and cross-examine the witness has been extinguished. He submitted that, in the interest of justice the Petitioner may be permitted to file its written statement and to cross-examine the witness of the Respondent No.1. He therefore prayed that, the impugned Order may be quashed and set-aside.

5. Per contra, learned counsel appearing for the Respondent No.1 opposed the application and justified passing of the impugned Order dated 10th January 2020 and submitted that, there are no merits in the present Petition and it may be summarily dismissed.

6. The chronology mentioned in para No.3 herein above are the admitted facts on record. It is to be noted here that, the Petitioner is Firm of Advocates. Though it is contended that, the concerned Advocate operates from New Delhi and is not occupying the suit premises regularly, the report of bailiff clearly indicates that, he had been to the suit premises on 8th August 2014 and tried to serve summons of the Trial Court proceedings upon the Petitioner, when its receptionist Ms.Amina Satrekor declined to accept it in the absence of authorized person. The contention of the Petitioner that, the said Ms.Amina Satrekor did not inform the said fact of visit of the bailiff to its owner or other associate Advocates cannot be accepted as the said Ms.Amina

Satrekor was appointed as a receptionist by the Petitioner, for looking after the day-today affairs of the Firm. It appears to this Court that, a spacious plea has been raised by the Petitioner that, the said Ms.Amina Satrekor left the job in the year 2015. The application filed below Exh.44 is not accompanied by the affidavit of the said lady Ms.Amina Satrekor. Even to this Petition her affidavit stating that, the remark of the bailiff in its report dated 8th August 2014 is incorrect and she never refused to accept the summons is missing. It is the settled position of law that, refusal to accept summons is a good service. In the present case, the refusal to accept the summons from the bailiff was by a regular employee of the Petitioner. The Petitioner has filed the said application for setting-aside ex-parte Order belatedly after about five years.

The Trial Court in para No.10 of the impugned Order dated 10th January 2020 has observed that, at the time of filing of the said application below Exh.44, the Petitioner neither annexed Written Statement along with it nor an application for condonation of delay caused in filing the said written statement was filed therewith.

7. The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere

with the Orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

8. After perusing entire record, this Court is of the view that, the Trial Court has not committed any error either in law or on facts while passing the impugned Order dated 10th January, 2020 below Exh.44. There are no merits in the Petition. Petition is accordingly dismissed.

[A.S. GADKARI, J.]

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