

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9784 OF 2016

Prabhakar D. Bhalerao	.. Petitioner
Versus	
Shobha Sanjay Meshram	.. Respondent

...

Mr. Chintan Y. Shah i/b Varsha Bhogle for the petitioner.
Mr. Manoj M. Badgujar for the respondent.

CORAM: BHARATI DANGRE, J.
DATED : 21st DECEMBER 2021

P.C:-

1 Rule. Rule made returnable forthwith. Heard by consent.

2 The petitioner is the original defendant who is aggrieved by an order passed below Exhibit-27 in Regular Civil Suit No.132 of 2012. By the said order, the application filed by the defendant for setting aside the ex-parte order against him and for taking his written statement on record is rejected.

3 Heard learned counsel for the petitioner and learned counsel for the respondent and perused the impugned order.

Tilak

4 The sole submission on which the petition deserves to be allowed is the fact that the defendants filed the applications specifically stating therein that the suit summons was not served upon him.

 The learned Judge has referred to an envelope which was not claimed but brought on record. By noting the above, the matter proceeded ex-parte against the defendant. Recording that the plaintiff has examined himself and one another witness and the Suit being instituted in the year 2010, the attempt on part of the defendant was described as an attempt to delay the proceedings.

5 Pertinent to note that the proceedings in the said suit are stayed by an order passed by this Court on 7th September 2016 and the order continue till date.

 In wake of the above, the specific stand of the defendant before the learned Judge is that he was not served with the summons; the learned Judge ought to have shown some indulgence, since in any way, the notice had returned with an endorsement “not claimed”. There is no finding rendered to the effect by the learned Judge that this amounted to service being effected. In absence thereof, I am inclined to grant indulgence, particularly when the proceedings in the Suit are at stand-still since last five years. This, however, shall be subject to payment of costs of Rs.10,000/- by the defendant to the plaintiff in the Suit

within a period of four weeks from today. Subject to costs being paid, the impugned order is set aside with a request to the learned Judge to culminate the proceedings in the Special Civil Suit No. 358 of 2010 within a period of one year from today.

6 Parties shall render their assistance to the learned Judge in expeditious conclusion of the Suit.

If necessary, the learned Judge may permit leading of additional evidence on the written statement by the defendant being brought on record.

7 Rule is made absolute in the aforesaid terms.

SMT. BHARATI DANGRE, J