

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2790 OF 2021

Rajesh Sopanji Bhute
...Versus...
Purushottam Vitthalrao Parate

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A.H. Daga, Advocate for petitioner

CORAM : N.B.SURYAWANSHI, J.
DATE : 10/08/2021

This petition challenges order passed below application Exh.36, by 6th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.544/2014 thereby setting aside ex parte order passed below Exh.1 of the suit.

2. The petitioner - plaintiff filed suit against the respondent - defendant seeking cancellation of registered sale-deed being document Nos. 18/14, 19/14 executed by him in favour of the respondent - defendant as post dated cheques issued by respondent - defendant were dishonoured. On receipt of the suit summons, the respondent - defendant appeared. However, subsequently on account of his non

appearance ex parte order was passed against him on 10/12/2014. Thereafter the respondent filed application Exh.36 for setting aside ex parte order, which was allowed. The said order is impugned in the present petition.

3. The learned Advocate for the petitioner strenuously submitted that the defendant had earlier appeared in the suit and thereafter had chosen to remain absent. When the matter was posted for argument, he filed the present application Exh.36, seeking setting aside of the ex parte order. No reason whatsoever was set out in the application as to why the defendant failed to remain present and prosecute the suit. Therefore, he assails the impugned order on the ground that it was barred by limitation. In support of his arguments, he relied upon the decision of this Court reported in ***1980 Mah LJ 675 in the case of Akola Zilla Parishad, Akola Vs. Laxman Baluji Manatkar and another.***

4. Perusal of the impugned order shows that the learned Trial Court has taken into consideration the fact that the petitioner - plaintiff had brought on record that some chances of settlement were there between him

and the respondent – defendant. The respondent defendant has stated in the application that he has a good defence as registered sale deeds are executed in his favour by the petitioner – plaintiff and he is owner and possessor of the suit property and since he has interest in the suit property, an opportunity to contest the suit on merit needs to be granted to him. The trial Court therefore recorded a finding that taking into consideration the nature of the suit and reliefs sought in it , it would be appropriate that the suit be decided by participation of both, the plaintiff and defendant, and opportunity needs to be given to both the sides to prosecute the suit on merits. Accepting the contentions of the petitioner that there is a delay in filing the said application, the trial Court has imposed a cost of Rs. 2500/- on the respondent – defendant while setting aside the ex parte order. There is no merit in the contention of the petitioner that the application should have been rejected on the ground of limitation. In **1980 Mah LJ 675 (supra)** is an Authority rendered in different facts and it lays down that for setting aside ex parte order an application is necessary from the defendant and it further lays down that law of limitation is applicable to such applications.

5. In the facts of the instant case, the trial Court was justified in setting aside the ex parte order by a well reasoned order for delay. It has imposed costs on the respondent - defendant. I therefore do not find any ground to interfere in the impugned order which is passed giving fair opportunity to the respondent - defendant. There is no substance in the petition and the petition is therefore dismissed.

6. The trial Court is expected to decide the suit expeditiously.

JUDGE