

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5418 OF 2017
THAKUBAI NIVRUTTI NAGARE DIED LRS SULOCHANA SITARAM
GAIKWAD AND OTHERS
VERSUS
DEVIDAS MARUTI NAGARE AND OTHERS**

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Mr. N. C. Garud, Advocate for the Petitioners.
Mr. A. S. Sawant, Advocate for Respondent No.1.
Mr. D. G. Nagode, Advocate for Respondent Nos.2, 5
and 6.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 17th NOVEMBER, 2022.**

PER COURT:-

1. The present petition is filed assailing the order dated 09.08.2016 passed by the Civil Judge, Junior Division, Parner on delay application no.11/2011. By that order the ex-parte decree dated 29.07.2009 has been set aside and the suit is restored by granting opportunity to defendant no.9 to file written statement. The petitioners who are original plaintiffs are aggrieved by that order.

2. It is contended on behalf of petitioners that defendant no.9 was always aware about filing of the suit and had admitted receipt of summons. He did not furnish any genuine reasons for not prosecuting the suit. It is submitted that on account of casual approach by defendant no.9, the petitioners are unnecessarily made to suffer and the suit which was decreed on 29.07.2009 still remains pending before the Court.

3. I have gone through the order passed by the Trial Court setting aside the ex-parte decree. Trial Court has accepted the justification sought

to be given by defendant no.9 that since compromise talks were going on between the parties, he had not filed written statement in the suit. It appears that, even during the pendency of the present suit the settlement talks did take place which has been recorded by this Court in his order dated 16.12.2017. Apart from this, after the suit is restored on 09.08.2016, the same has progressed further. The defendant no.9 has filed his written statement. The issues are framed. The plaintiffs have filed their evidence affidavit and the plaintiffs have been examined. Now the suit at the stage of evidence of defendant no.9.

4. In the light of the above position emerging before me, I do not find that any furtherance in the order dated 09.08.2016 is warranted at this stage. At the same time it is observed that the Trial Court has imposed insignificant costs of Rs.500/- on defendant no.9, who sought setting aside of ex-parte decree after a period of 23 long months. In my view, the Trial Court ought to have imposed substantial costs on defendant no.9. I, therefore, proceed to pass the following order:

ORDER

A. Writ Petition is dismissed by upholding the order dated 09.08.2016. However, the amount of costs of Rs.500/- awarded by the Trial Court is enhanced to Rs.10,000/-. The defendant no.9 (respondent no.1) to pay costs of Rs.10,000/- to

the petitioners within a period of four weeks from today.

B. Needless to state that, in the event, the order of Trial Court dated 09.08.2016 shall stand set aside and respondent no.1 fails to pay costs to the petitioners within the stipulated time, the ex-parte decree dated 29.07.2009 would continue to operate.

(SANDEEP V. MARNE)
JUDGE