

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 WRIT PETITION NO.11264 OF 2022

MOHD NOORSAIFODDIN MOBIN JAFAR
VERSUS
KHAJA MOHIUDDIN SHAIKH HAIDER INAMDAR DECEASED
THROUGH LRS AFSARBEGUM MOHIYODDININAMDAR AND
OTHERS

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Advocate for Petitioner : Mr. Mahesh P. Kale
Advocate for Respondent No.1-C : Mr. Gaurav L. Deshpande

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CORAM : SANDEEP V. MARNE, J.

DATE : 18-11-2022

PER COURT :

. The petitioner has assailed the order dated 30.08.2022 passed by the Civil Judge Senior Division, Omerga rejecting the application at Exh.310 filed in Regular Civil Suit No.36 of 2012 seeking setting aside *ex parte* order.

2. The suit pertains to the year 2012 in which the petitioner is impleaded as defendant no.13. There is no dispute about the address of the petitioner stated in the title of the suit. In addition to normal mode of service, a paper publication was also made on 22.10.2006 for service on the petitioner. However, since he failed to appear in the suit, *ex parte* order was passed against him on 29.01.2007. The suit thereafter progressed and the evidence of the parties was completed. Plaintiffs filed their written arguments on 29.07.2022. After plaintiffs filed their written arguments, in the afternoon session petitioner – defendant no.13 suddenly appeared before the Court and filed application at Exh.310 seeking setting

aside *ex parte* order dated 29.01.2007. By that time, the suit was listed on 193 dates. To make things worst after filing of the application dated 29.07.2022, petitioner or his advocate did not bother to check the proceedings in that suit nor argued the same. In these circumstances, the trial Court has proceeded to reject the application by order dated 30.08.2022.

3. Considering the aforesaid conduct of the petitioner, it is clear that the application was filed with a view to delay in decision of the suit.

4. Petitioner suddenly appeared in the suit on 29.07.2022 and filed application stating that he acquired knowledge of filing of the suit through his relatives after returning from *Hajj pilgrimage*. By citing such vague reason, *ex parte* order passed on 29.01.2007 was sought to be recalled.

5. The learned counsel for petitioner has relied upon the judgment of the Madras High Court in **S. Santha vs. M.S.M.K. Packiam, 2016 SCC OnLine Mad 31323** in support of his contention that no specific period of limitation is prescribed under the provisions of Order-9, Rule-7 of the Code of Civil Procedure and therefore trial Court could not have rejected petitioner's application only on the ground that the same was filed belatedly.

6. Considering the peculiar facts and circumstances of the case as narrated herein above and especially considering the fact that the application for setting aside *ex parte* order was conveniently filed in the afternoon session on the day on which the written arguments

were filed by the plaintiffs, I am of the considered view that the only possible objective behind filing the same was to delay decision of the suit. In such circumstances, the judgment cited by the learned counsel for petitioner will have no application to the facts and circumstances of the present case.

7. Considering the above factual circumstances, I am of the view that the trial Court has not committed any error in rejecting the petitioner's application. The petition is devoid of merits and the same is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)