

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3132 OF 2022

Mr.Lijo Jose Mullonkal

...Petitioner

vs.

Mr.Rupesh Gajanan Sawarkar

...Respondent

Mr.Rohit D. Joshi for Petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 21 JUNE 2022

P.C. :

1. The Petitioner is the original Plaintiff who has instituted Special Civil Suit 48/2019 seeking cancellation of Sale Deed dated 16 October 2017 executed in favour of the Defendant, and consequential injunctive relief. The suit proceeded exparte decree on 15 October 2019 on the premise that the Defendant avoided the suit summons and then did not respond to the public notice in the daily newspaper "Pudhari".

2. While, according to the Plaintiff, attempt was made to serve the Defendant on the address mentioned in the Sale Deed, the Defendant sought setting aside of the exparte order, on the basis of a specific assertion that he does not reside at the said address and as of fact the Plaintiff was well aware that the present address of the Defendant is Rajiv Apartment, New Lokhandwalla, Andheri(West). Interestingly, the Defendant specifically asserted that the Plaintiff was well aware of the said address and he did visit the Defendant at the address at Lokhandwala. This assertion of the Defendant is not denied specifically in the reply filed to the application for setting aside the exparte order.

3. The learned trial Judge has, in his discretionary jurisdiction, set aside the order dated 15 October 2019 accepting the submission referred to supra and further noting that in view of the extra ordinary situation prevailed from 2020 and 2021 due to pandemic, the delay in approaching the court is justified. The discretion exercised by the learned trial Judge is neither arbitrary nor capricious and I am not inclined to interfere in writ jurisdiction.

4. The petition is dismissed.

(ROHIT B. DEO, J.)