

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8542 OF 2021

Shri. Hemant Mangilal Parmar and Ors. ..Petitioners
Versus
Roma Builders Pvt. Ltd. and Ors. ..Respondents

Mr. Jayesh M. Joshi, for the Petitioners.
None for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 28th JANUARY, 2022

PC.

1. Though served none appears for the respondent No.1/plaintiff.

2. The Roznama depicts that in May/June, 2021, petitioners/defendant Nos.1 to 3, 5 to 7, 9 to 13 and 15 were proceeded *ex-parte*. The petitioners accordingly took out application Exh.24 on 9th July, 2021 seeking setting aside *ex-parte* orders dated 7th June, 2021, 25th June 2021 and 2nd July, 2021. In support of the prayer for setting aside aforesaid orders, a reliance is placed on pandemic situation which prompted defendants to appear late in point of time.

3. The Trial Court rejected the prayer for setting aside *ex-parte* orders on the ground that no sufficient cause for non-appearance was disclosed.

4. Having heard Mr. Jayesh Joshi, learned counsel for the petitioners and in view of the pandemic, case of the petitioners ought to have been considered by the Court below liberally on the issue of setting aside *ex-parte* orders. The reasons furnished in support of the setting aside of the impugned order discloses sufficient cause which warrants interference.

5. Respondent No.1/plaintiff though served has chosen not to appear and the contentions raised in the petition are not controverted. That being so, *ex-parte* orders dated 7th June, 2021, 25th June 2021 and 2nd July, 2021 are not sustainable, as such same are set aside.

6. Application Exh.24 stands allowed subject to payment of cost of Rs.2000/- to be paid by each of the petitioners before the Court below within a period of four weeks from today.

7. Statement of learned counsel for the petitioners that the written statement shall be filed within four weeks from today is also accepted as an undertaking to this Court failing which Court may proceed against petitioners on merits.

8. As such, petition stands allowed in the aforesaid terms.

[NITIN W. SAMBRE, J.]