

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

WRIT PETITION NO.11225 OF 2019

Shree Siddhivinayak Education and
Charitable Trust

..... Petitioner

Vs.

Govind Balya Patil and Ors.

.... Respondents

.....

Mr. Surel Shah i/by Mr. Swaroop M. Karade for the Petitioner and
for Applicant in IA/10436/2022.

Mr. Sandesh Deshpande with Anaga Sriram for R.Nos.1a to 1c.

CORAM: SANDEEP K. SHINDE, J.

RESERVED ON : SEPTEMBER 16, 2022

PRONOUNCED ON: SEPTEMBER 20, 2022

P.C.

1. The trial Court vide order dated 8th June, 2017 directed
suit to proceed ex-parte against the defendant no.8-petitioner
herein. Thus, this Petition.

2. Petitioner is the Defendant No.8 in the Special Civil
Suit No.327 of 2016 filed by the Respondent No.1 for declaration,
injunction and other reliefs, more particularly stated in the plaint.
It is a matter of record that the plaintiff purportedly served
petitioner by way of substituted service and accordingly, trial

Court was pleased to mark the defendant as ex-parte.

3. Petitioner states that it was never properly served with summons. The Interim Application moved by the Plaintiff was decided in its absence and trial Court partly allowed the injunction application at Exhibit 5. Plaintiff came to know of the order below Exhibit 5 on 16th November, 2017. Whereafter, immediately it was challenged by filing Miscellaneous Civil Appeal with delay condonation application being Miscellaneous Application No.01 of 2018. The delay was condoned and Miscellaneous Civil Appeal was registered as Miscellaneous Civil Appeal No.84 of 2018.

4. Mr. Shah, learned counsel appearing for the Petitioner submits that defendant took steps to initially challenge the order passed below Exhibit 5 along with an application for condonation of delay. The said proceedings took substantial time. Mr. Shah submitted that delay therein was condoned. Mr. Shah submitted after condoning the delay, he moved the trial Court to set aside the order whereby suit was directed to proceed ex-parte against it. Mr. Shah, learned counsel for the Petitioner, has drawn my attention to paragraph 5 of the impugned order wherefrom it

appears that the learned Trial Court relying on the address of the Petitioner registered with Public Trust Office, held that the petitioner was properly served at the given address. However, it appears, address of Petitioner Trust was changed on 31st July, 2017. Mr. Shah submitted that although the change in Petitioner address was endorsed in official records of trust office on 31st July, 2017, however, address was changed much before.

5. Mr. Shah, therefore, submits that material on record does not suggest that the Petitioner avoided or intentionally kept away from the process of law. Thus, argued that in the interest of justice, order impugned be set aside and the application below Exhibit 46 in the Special Civil Suit No.327 of 2016 be granted and Written Statement be directed to be taken on record.

6. Mr. Sandesh Deshpande, learned counsel for the Respondent Nos.1a to 1c supported the impugned order.

7. In consideration of the fact that petitioner's appeal against Exhibit 5 has been registered after condoning the delay and further material on record indicates, there was change in the address of the defendant no.8 before effecting the primary

service of summons, in the interest of justice, it is desirable to allow plaintiff/defendant no.8 to contest the suit on merits. For all these reasons, the impugned order dated 1st October, 2019 below Exhibit 46 in Special Civil Suit No.327 of 2016 passed by the IIInd Joint Civil Judge, Senior Division, Thane is set aside. In the result, application below Exhibit 46 is allowed subject to cost of Rs.25,000/-. Petitioner shall pay cost to the respondent/plaintiff within three weeks from the date on which the order is uploaded on the web-site of this Court. Subject to cost, trial Court shall take Written Statement of the Petitioner/Defendant No.8 on record. Petition is allowed in the aforesaid terms and disposed of.

(SANDEEP K. SHINDE J.)

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

**INTERIM APPLICATION NO.10436 OF 2022
IN
CIVIL WRIT PETITION NO.11225 OF 2019**

Shree Siddhivinayak Education and
Charitable Trust

..... Applicants/
Petitioners

Vs.

Govind Balya Patil and Ors.

.... Respondents

.....

Mr. Surel Shah i/by Mr. Swaroop M. Karade for the Petitioner and
for Applicant in IA/10436/2022.

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CORAM: SANDEEP K. SHINDE, J.

DATED: SEPTEMBER 16, 2022

P.C.

Pending suit, Respondent No.1/Plaintiff passed away
on 4th August, 2021. This application is filed to bring his legal
representatives on record. The cause to sue survives.

2. Heard learned counsel for the Parties.

3. In view of the averments in paragraphs 4,5 and 6,
delay of 240 days is condoned. Application is allowed in terms of

prayer clauses (a), (b) and (c). Consequential amendment to be carried out within fourteen days from today.

4. Interim Application is disposed of.

(SANDEEP K. SHINDE J.)