

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

WRIT PETITION NO.2452 OF 2023

Bhimdev Posha Thakur
and others

.....Petitioners

Versus

Sushila Anant Patil
and others

.... Respondents

Mr. Zal Andhyarujina, Senior Advocate a/w. Amrut Joshi,
Mani Thevar i/b. Ganesh & Co. for the Petitioners.

CORAM : SARANG V. KOTWAL, J.

DATE : 6th APRIL, 2023

P.C. :

1. The Petitioners, who are the original Defendant Nos.1 to 13 in Special Civil Suit No.52/2017 before the 12th Jt. Civil Judge, Senior Division at Thane, have challenged the order dated 11.10.2017 passed by learned Judge below Exhibit-58 thereby rejecting the Petitioners' application for setting aside the exparte order passed against them on 3.10.2016.

2. Heard Mr. Zal Andhyarujina, learned Senior Counsel for the Petitioners.

3. Learned Senior Counsel for the Petitioners invited my attention to the order dated 5.7.2022 whereby this Court (Coram : Rohit Deo, J.); whereby the notice was issued for final disposal. The office noting shows that the Respondent Nos.1 to 6 are duly served. They are the original Plaintiffs and hence the contesting Respondents in this Petition. Learned Counsel Shri Marathe, has originally filed his Vakilpatra for the Respondent Nos.1 to 5 before this Writ Petition was dismissed for non-removal of the office objections. The Writ Petition was restored to its file vide a separate order dated 5.7.2022. Thereafter, the Respondent Nos.1 to 6 have not made any fresh arrangement of their representation in this Petition after the notice for final disposal was issued on 5.7.2022. Therefore, I have proceeded to hear and decide this application after hearing learned Senior Counsel for the Petitioners.

4. Learned Senior Counsel for the Petitioners invited my attention to the order dated 20.2.2017 passed by the same trial Court below Exhibit-46 in the same suit

whereby the application preferred by the Defendant No.51 for setting aside the 'No Written Statement' order was allowed on directions of payment of costs of Rs.2,000/- to the Plaintiffs. Learned Senior Counsel submitted that similar approach should have been adopted in the case of the present Petitioners and by imposition of reasonable cost payable to the Plaintiffs their application should have been allowed.

5. Learned Senior Counsel further submitted that some of the Petitioners were minor when the suit was filed and the other Petitioners were housewives. Therefore, it was not possible for them to follow the proceedings in the suit diligently. Therefore, there was an inadvertent delay in approaching the Court for setting-aside the *ex parte* order. He submitted that in the interest of justice, some costs may be awarded and the impugned order be set aside so that the matter proceeds on the merits of the case rather than on the technicalities.

6. I have considered these submissions. The

impugned order mentions that it was submitted before the trial Court that some of the Defendants were minors and some were housewives and, therefore, were unable to attend the Court. It was observed that according to the Plaintiffs, the Defendants were regularly present before the Tahsildar Court, Thane, which was not denied by the Defendants and since that matter was diligently proceeded there was no reason not to pursue the present proceedings in the Suit. Learned Judge did not accept the reasons for not-attending the Suit by these Petitioners and, therefore, their application was rejected. It was also observed that the delay was not small.

7. Learned Senior Counsel rightly referred to the order dated 20.2.2017 passed by the trial Court in the case of the Defendant No.51 which was passed below Exhibit-46 in the same Suit. In his case also there was delay in filing the written statement and it was observed that the delay was not marginal one. In spite of that, the delay in filing the written statement was condoned and that Defendant was

permitted to file his written statement.

8. Apparently, learned trial Court had adopted two different views for the same set of requests. In the interest of justice this approach is not justified. Therefore, even the present Petitioners deserve similar approach and on payment of costs to the Plaintiffs their application can be allowed. Hence, the following order :

:: O R D E R ::

- i. The order dated 11.10.2017 passed by the 5th Civil Judge, Senior Division, Thane below Exhibit-58 in Special Civil Sut No.52/2017 is set aside.
- ii. The Petitioners are directed to pay the cost of Rs.25,000/- (Rupees Twenty Five Thousands Only) to the Plaintiffs. The Petitioners are permitted to file their written statement in the aforementioned Special Civil Suit No.52/2017 within a period of 30 days from today on payment of the cost.
- iii. The Petition is disposed of in the aforesaid terms.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
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(SARANG V. KOTWAL, J.)