

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3979 OF 2021

Narendrasingh Maini & Ors.

...Petitioners.

Versus

Vinodkumar Shankarlal Songar
and Others.

..Respondents.

Mr. R. D. Soni i/b Ms. Meena R. Sharma for the Petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : March 24, 2023.

P. C. :

1. None appears for the respondents. As limited controversy is raised in the present petition, the petition is taken up for hearing.
2. Heard. By this petition, the challenge is to the order dated 27th January 2021 passed below Exhibit-162 in Special Civil Suit No.680 of 2016 rejecting the petitioner's application for setting aside the order of *ex-parte* hearing dated 21st January 2017 and taking the written statement on record.
3. Mr. Soni, learned counsel appearing for the petitioners submits

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that the admitted position is that the petitioners (original defendant Nos. 1 and 2) were served through the substituted service by way of a paper publication. It is his submission that the said paper publication was not noticed by the petitioners. He further contends that subsequently in the year 2020, the plaintiff, i.e, respondent No.1 had moved an application below Exhibit-5 in the said suit, of which notice was served on the petitioners and, the petitioners became aware of the pending suit for the first time in the year 2020. He would further contend that the petitioners appeared and contested Exhibit-5 application, by filing a detailed reply. He would further contend that it is at that point of time, the petitioners realised that there is an order of *ex-parte* hearing, and as such, an application came to be preferred for setting aside the said order of *ex-parte* hearing, which has been rejected giving rise to the present petition.

4. Perused the application dated 5th January 2021 filed by the petitioners seeking to set aside the order of *ex-parte* hearing and permission to file written statement on record. The application is bereft of any details and it merely states that the notice was issued in the year 2020 and thereafter the petitioners had appeared. In my opinion, it is necessary that the proper application giving all the details is required

to be filed inasmuch as the trial Court has to apply its mind and exercise the discretion for setting aside the order for *ex-parte* hearing, particularly when the suit is of the year 2016.

5. In this context, it is also pertinent to note that defendant no.1-respondent No.3 herein was also served with a paper publication and he thereafter appeared in the said suit, which is the stand taken by respondent No. 1 in the affidavit-in-reply filed in the present petition.

6. Considering that there is no dispute that the petitioners were served through paper publication, it cannot be deemed improbable that the petitioners were not aware of the litigation. It is not clear as to why the substituted service was permitted instead of service of summon by regular mode/course. I, therefore, deem it appropriate to quash and set aside the impugned order and remand the matter back to the trial Court with liberty to the petitioners to file a detailed application setting out the relevant facts / averments justifying their non appearance in order to enable the trial Court to apply its mind and to pass orders afresh.

7. Considering the above, the impugned order is quashed and

set aside. The petitioners to file a detailed application for setting aside the order for *ex-parte* hearing dated 21st January 2017 and seeking such other reliefs, as deemed appropriate, within a period of two weeks from today. In the peculiar facts and circumstances of the case and in the interest of justice, the trial Court is requested to decide the proposed application of the petitioners as expeditiously as possible and preferably within the period of six weeks of its filing.

8. Writ petition is disposed of in the aforesaid terms.

[Sharmila U. Deshmukh, J.]