

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

WRIT PETITION NO.10008 OF 2023

Hareshwar Sadanand Mayekar

...Petitioner

Versus

Mohd. Ismail Sayyed & Anr.

...Respondents

Mr. Anil Kumar Patil a/w. Mr. Smit Nagda i/b. Mr. Pankaj Pandey, for
the Petitioner.

Ms. Vrushali U. Kabare, for Respondent No.1.

CORAM : MADHAV J. JAMDAR, J.

DATED : 18th AUGUST 2023

P.C. :

1. Heard Mr. Patil, learned counsel appearing for the
Petitioner and Ms. Kabare, learned counsel appearing for
Respondent No.1.

2. The Petitioner who is the original Defendant is impugning
the ex-parte eviction decree passed by the learned Trial Court
as well as the order of learned Trial Court dismissing the
application to set aside the ex-parte decree and also the order
of the Appellate Court confirming the same.

3. The suit has been filed in January-2020. The suit
summons were not served as Defendant No.1 i.e. the present
Petitioner was not found in the suit premises. It appears that

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the steps were being taken to serve the Defendant No.1 by substituted service, however the Defendant No.1 suo moto appeared in the suit personally on 28th February 2020 and waived the service of suit summons and the suit was accordingly adjourned for filing written statement on 4th March 2020.

4. It is the contention of the Petitioner i.e. Defendant No.1 that on 4th March 2020 his Advocate could not appear in the Court, as her husband had passed away and she was observing Iddat and thereafter lockdown was imposed. During the said COVID-19 pandemic period, on 21st August 2021 order to proceed without written statement was passed against Defendant No.1. On 27th September 2021, evidence affidavit was filed by the Plaintiff and thereafter, ex-parte Judgment and Decree was passed on 29th October 2021.

5. It is the contention of Mr. Patil, learned counsel appearing for the Petitioner that the said order to proceed without written statement as well as the said ex-parte Judgment and Decree is passed during the COVID-19 pandemic. It is the contention of Ms. Vrushali Kabare, learned counsel appearing for

Respondent No.1 that the said orders were passed when the COVID-19 restrictions were not in operation. However, taking suo moto cognizance of difficulties faced by litigants, due to COVID-19 pandemic, the Supreme Court has ordered that the period from 15th March 2020 till 28th February 2022 shall stand excluded for the purpose of limitation as may be prescribed under any law and in respect of all judicial/quasi-judicial proceedings. Thus, it cannot be said that during relevant period, entire normalcy was restored.

6. In view of the above circumstances and as this Court is inclined to admit the Writ Petition as arguable questions are raised, learned counsel appearing for Respondent No.1 took instructions from Respondent No.1-Plaintiff- Mohd. Ismail Sayyed who is personally present in the Court. As per the said instructions, learned counsel appearing for Respondent No.1 states that, by consent, order dated 2nd January 2023 passed by the learned Judge of the Small Causes Court at Mumbai in Marji Application No.72 of 2022 in R.A.E. Suit No.89 of 2020 and order dated 24th April 2023 passed by the Appellate Bench of the Small Causes Court at Mumbai in Miscellaneous Appeal

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No.20 of 2023 be quashed and set aside and the said suit be restored to file. Her only submission is that the trial be expedited.

7. Accordingly, by consent order dated 2nd January 2023 passed by the learned Judge of the Small Causes Court at Mumbai in Marji Application No.72 of 2022 in R.A.E. Suit No.89 of 2020 and order dated 24th April 2023 passed by the Appellate Bench of the Small Causes Court at Mumbai in Miscellaneous Appeal No.20 of 2023 are quashed and set aside and the said Marji Application No.72 of 2022 seeking setting aside ex-parte decree passed in R.A.E. Suit No.89 of 2022 dated 29th October 2021 and further seeking permission to file written statement and contest the suit is allowed in terms of prayer clauses (a) and (b) subject to payment of cost of Rs.10,000/- to be paid to the Respondent No.1-Plaintiff on or before 8th September 2023. The said prayer clauses read as under :

“(a) This Hon’ble Court be pleased to quash and set aside uncontested/ex-parte judgment and decree dated 29.10.2021, passed in R.A.E. Suit No.89 of 2020.

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(b) This Hon'ble Court be pleased to set aside the uncontested/ex-parte judgment and decree passed in R.A.E. Suit No.89 of 2020, and allow the applicant to file his written statement and to contest the suit on its own merit."

8. Both the parties to remain present before the concerned Judge of the Small Causes Court at Mumbai on 8th September 2023. The present Petitioner who is Defendant No.1 to keep ready his written statement to be filed in the Small Causes Court at Mumbai in said R.A.E. Suit No.89 of 2020. If the cost of Rs.10,000/- is not paid to the Respondent No.1 on or before 8th September 2023 then the same be paid on 8th September 2023.

9. The concerned learned Judge, Small Causes Court at Mumbai is requested to fix the schedule for disposal of the said suit on 8th September 2023 or on the subsequent date. The learned Trial Court is requested to dispose of the suit expeditiously and if possible to dispose of the same within a period of one year.

10. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]