

Nikita

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

WRIT PETITION NO.13580 OF 2023

Ramesh Dnyaneshwar Talekar

... Petitioner

V/s.

Chandrakant Shripati Alhat and Ors.

... Respondents

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Mr. Tejas Dande a/w Mr.Bharat Gadhavi a/w
Ms.Manasi Dande a/w Ms. Seema Patil a/w Vishal
Navale i/b Tejesh Dande & Associates for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 2, 2023

P.C.:

- 1.** The petitioner is challenging order dated 7th November 2022 passed by the Trial Court rejecting the application to set aside exparte order.
- 2.** The respondent/original plaintiff filed a suit for declaration, partition, injunction, compensation and for cancellation of document filed Regular Civil Suit No.757 of 2012 for a declaration, partition.
- 3.** In the said suit, the petitioner on 18th August 2022 filed an application for setting aside expare order passed against him on 18th September 2018. The ground pleaded for setting aside exparte order was lack of knowledge of pendency of the suit.
- 4.** The Trial Court rejected the application holding that the petitioner's wife was served through Court and on an order passed below Exhibit-5 on 2nd August 2014, in a suit between the

petitioner and parties to the suit. The Court referred to pendency of Special Civil Suit No.2418 of 2011. Therefore, the reasons stated in the application about lack of knowledge has no substance.

5. The learned advocate for the petitioner submitted that there is difference between the signature of the petitioner's wife on the bailiff's report and on the Pan Card. According to him, the observations made by the Court in an order dated 2nd August 2014 was without their being any issue raised in pleadings by the parties. According to him, since valuable rights of parties in immovable property are involved, liberal approach should be adopted by the Court. He, therefore, submitted that the prejudice caused to the respondent can be compensated in terms of costs.

6. On perusal of the record, it appears that the petitioners wife was served with suit summons on 24th February 2018. The bailiff of the Court has mentioned in its report that when he went at the address mentioned in the plaint, petitioner was not present, however petitioner's wife told him that the petitioner was out of residence and she showed her willingness to accept the summons on behalf of the petitioner. Bailiff, therefore, obtained signature of the petitioner's wife and submitted report to the Court on 27th February 2018.

7. It is pertinent to note that the petitioner filed application for setting aside exparte order after four years on 18th August 2022, however, no application for condonation of delay in filing such application is filed by the petitioner. Without such application, the

application for setting aside exparte order was not maintainable.

8. The Trial Court considered entire incidents in the form of reference of Special Civil Suit No.2418 of 2011 in an order passed below Exhibit-5 on 2nd August 2014, in Special Civil Suit No.851 of 2013 pending between the parties to the present suit. The Trial Court, recorded a finding that reference to the pendency of present suit amounts to knowledge of the suit to the petitioner and therefore, reason of lack of knowledge about pendency of suit cannot be accepted.

9. Once, the petitioner makes a positive case that he had no knowledge about the pendency of suit, he need to prove such cause to the satisfaction of the Court. If the plaintiff produces the material to show that the plaintiff had knowledge of the pendency of suit, the reason pleaded by the petitioner becomes a false reason. If a person pleads a false reason for seeking discretionary relief, the Court's will be justified in refusing to exercise discretion in their favour.

10. Therefore, in my opinion, there is no error of jurisdiction committed by the Trial Court while rejecting application of the petitioner for setting exparte order filed after four years.

11. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)