



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

7 WRIT PETITION NO.9344 OF 2024

**LAXMAN GANGARAM AGLAWE
VERSUS
ANANDRAJ RADHAKISHAN JAISWAL & OTHERS**

...
Advocate for the petitioner : Mr.M.R.Malpani
Advocate for Respondent no.1 : Mr.S.P.Shah

...
CORAM : ARUN R. PEDNEKER, J.
DATE : 02.09.2024

P.C. :

1] By the present petition, the petitioner challenges the order dated 29.07.2024 whereby application filed for setting aside the *ex parte* order against the defendants is allowed by the trial Court.

2] The suit is filed by the petitioner – plaintiff for partition and separate possession. In the said suit, notice was issued on 10.05.2024, returnable on 14.05.2024. On 14th May, 2024, the defendant was present in the court but the Court was on vacation. On the next date i.e. on 27th May, 2024 as the petitioner was ill, he gave a GPA to his son and his son signed the Vakalatnama as GPA however, the defendant / petitioner failed to appear before the Court till 4.00 p.m., as such, *ex parte* order was passed against the defendant. Thereafter, on the very same day, the Advocate

for the defendant has filed application to set aside *ex parte* order passed against him. The trial Court, by order dated 29.07.2024, allowed the application for setting aside the *ex parte* order.

3] Heard the learned counsel for the petitioner. Having perused the impugned order dated 29.07.2024 passed by the trial Court, I do not see any reason to interfere in the impugned order. The trial Court had made the notice returnable within 4 days and the matter was adjourned for two weeks as the Court was on vacation. The Court in the fact situation should have not passed *ex parte* order on the returnable date and has rightly recalled the order on application of defendant. The Writ Petition is dismissed as the same is frivolous. The petitioner to deposit cost of Rs.500/- to the Advocates Association of Bombay High Court at Aurangabad within 4 weeks.

[ARUN R. PEDNEKER]
JUDGE

DDC