

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6518 OF 2023

Mahadev Shindlu Waghmare & Anr.

.. Petitioners

Versus

Sayaji Ankush Gaikwad & Ors.

.. Respondents

-
- Mr. Akshay A. Kulkarni for Petitioners

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 10, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 10.07.2024.
3. Heard Mr. Kulkarni, learned Advocate for Petitioners.
4. In the present case, challenge is maintained to the twin orders dated 24.02.2022 and 03.11.2022. These orders are appended at Exh. G, page Nos. 32-33 and Exh. J, page No. 38 of the Petition. Defendant Nos. 7 & 9 (Petitioners herein) were impleaded subsequent to filing of the Suit by the Plaintiff. However, they failed to contest the Suit proceedings and in the first order dated 24.02.2022 passed below Exh. 80, it is stated by the Court that exparte order came to be passed against them.
5. Mr. Kulkarni would inform the Court that no such order to proceed with the Suit exparte against Defendant Nos. 7 & 9 was ever

passed and that is the precise reason as to why there is no date mentioned in the order passed below Exh. 80. However being under the impression that such an ex parte order was indeed passed against the Defendant Nos. 7 and 9, they filed Application for seeking to set aside the said ex parte order. However in the meanwhile on 20.09.2019, learned Trial Court passed an order of “No WS” against Defendant Nos. 7 & 9. That order was also challenged by Defendant Nos. 7 & 9. For the reasons mentioned in the Application, benefit will have to be given to Defendant Nos. 7 & 9 so as to not non-suit them completely from the Suit proceedings. In the interest of justice, the delay of one year also deserves to be condoned.

6. Mr. Kulkarni would inform the Court that both the Defendants have already filed their written statement on record along with Exh. 80 but the same has not been exhibited by the Court as yet. I am also in disagreement with the reasons mentioned by the learned Trial Court while disposing of the Application filed below Exh. 80 as the reasons given thereunder ought to have considered the grounds stated in the Application filed by Defendant Nos. 7 & 9. Having not considered the same, I am inclined to accept the reasons given by Defendant Nos. 7 & 9 in their Application and condone the delay of one year. In that view of the matter, the order dated 24.04.2022 stands quashed and set

aside. Resultantly subsequent order dated 03.11.2022 also stands quashed and set aside.

7. Learned Trial Court is directed by this Court to accept the written statement filed by Defendant Nos. 7 & 9 and exhibit the same in accordance with law. Resultantly the Applications filed below Exhs. 80 and 94 both stand allowed. Defendant Nos. 7 & 9 are directed to pay costs of Rs. 5000/0 to the Plaintiff within a period of one week from today which is a condition precedent for allowing the present Petition.

8. With the above direction, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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