

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10234 OF 2017

Sunita Baban Chavan

.. Petitioner

Versus

Pradip Chavan & Ors.

.. Respondents

-
- Mr. Dileep Satale for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 26, 2024

P. C.:

1. Heard Mr. Satale, learned Advocate for Petitioner.
2. Present Writ Petition takes exception to the order dated 06.06.2017 passed by the learned Trial Court in Application below Exh. 39.
3. Defendant No. 1 filed Application below Exh. 39 seeking condonation of delay of approximately 90 days in filing the written statement. Suit summons was served on Defendant on 13.10.2015 and the Defendant appeared before the Trial Court on 03.11.2015. However, thereafter Defendant did not appear on 11.12.2016 before the learned Trial Court and the Trial Court passed the order that the suit to proceed without written statement against Defendant No. 1. Being aggrieved with the said order, Defendant filed Application below Exh. 39 seeking to set aside the said order and attempted to explain

the delay for non-appearance and sought condonation of delay. Application below Exh. 39 seeking condonation of delay is at page No. 18 of the Writ Petition.

4. I have perused the said Application. It has been stated in the said Application that Defendant No. 1 had medical issues due to which he was unwell and unable to meet his Advocate which led to the delay. That apart it is also stated that Defendant No. 1 took sometime to gather the documentary evidence that was required to be given to his Advocate. Learned Trial Court while passing the impugned order dated 06.06.2017 and dismissing the Application below Exh. 39 did consider the said reasons but opined that it is not to the satisfaction of the Court. Purely on this count, the Application below Exh. 39 has been rejected. In the facts of the present case, allowing the impugned order to sustain would deprive Defendant No. 1 of his valuable right to defend the suit proceedings. It is seen that the suit is filed for cancellation of Will and seeking declaratory reliefs against the Defendant. Not Allowing the Defendant No. 1 to file his written statement would undoubtedly be not allowing his defence be taken on record. Application filed by Defendant No. 1 which is below Exh. 39 cannot be discarded merely because adequate details are not given therein. I am of the opinion that the said Application ought to have been considered by putting the Defendant No. 1 to adequate

terms. Having not done so, the impugned order dated 06.06.2017 came to be passed.

5. In view of the above, I am not inclined to sustain the impugned order dated 06.06.2017 and the same is therefore quashed and set aside. resultantly allowing the Application filed by Defendant No. 1 below Exh. 39. Defendant No. 1 shall pay costs of Rs. 5000/- to the Kirtikar Law Library, High Court, Mumbai as a condition precedent for setting aside of the order dated 06.06.2017 which shall be paid within a period of two weeks from today. Subject to costs being paid and the receipt thereof placed before the learned Trial Court, learned Trial Court is directed to exhibit the written statement filed by Defendant No.1 which is already on record and thereafter proceed with the Suit strictly in accordance with law.

6. All contentions of the parties are expressly kept open without opining on any of the issues on merits in the matter.

7. Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
MOHAN
AMBERKAR
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2024.06.26
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