

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14847 OF 2023

Sudakshana Sahakari Griharachana Sanstha
Maryadeet

.. Petitioner

Versus

Digambar Bapuji Parulekar

.. Respondent

.....

- Dr. Uday P. Warunjikar, Advocate for Petitioner.
- Mr. Jaydeep Deo, Advocate for Respondent.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 22, 2024

P.C.:

1. Heard Dr. Warunjikar, learned Advocate for Petitioner and Mr. Deo, learned Advocate for Respondent.

2. This Writ Petition takes exception to the order passed in Application filed below Exhibit-14 dated 11.09.2023, Application was filed by Defendant for setting aside *ex parte* order to proceed with the suit proceedings *ex parte* as against the Defendant. The order of 'no Written Statement' dated 28.11.2022 is at Exhibit-B, page No.15 of the Writ Petition.

3. Dr. Warunjikar has drawn my attention to page No.45, Exhibit-D to the Writ Petition which is the summons issued by learned Trial Court on 05.11.2022 with a returnable date on 15.11.2022. He would submit that though one opportunity was given, order dated

28.11.2022 came to be passed on the premise that Defendant was duly served with the suit summons but failed to appear.

4. Application filed for setting aside of *ex parte* hearing order is at Exhibit-E, page No.46 of the Writ Petition and I have perused the same. Reasons given therein are convincing and I am thoroughly convinced with the same. Defendant is a residential Co-operative Housing Society comprising of 69 members. I see no reason as to why the reasons stated should not be accepted or should not have been accepted while passing order below Exhibit-14. However, learned Trial Court in its wisdom has noted that there is no single reason in the Application for explaining the delay caused for filing the Written Statement and record shows that Defendant did not appear before the Court. There is no doubt that Defendant – Society received the summons on 11.11.2022 and considering the fact that Defendant is Co-operative Residential Housing Society of 69 members, the impugned order dated 11.09.2023 is extremely harsh, unsustainable and cannot be countenanced specifically in view of grounds stated in the Application dated 19.12.2022.

5. Mr. Deo appearing for the Respondent raises a very strong objection, *inter alia*, stating that adequate opportunity was infact admittedly given to the Society and some of the members of the Society were in fact present in the Court also. Whatever, Mr. Deo has

stated is not attempted to be suppressed by Petitioner – Society and I find mention of the same in paragraph No.3 of its Application. Be that as it may, I am of the opinion that the impugned order shuts out the defence of the Society by giving them very little time and only one opportunity and hence it needs to be set aside. Hence, objection raised by the Defendant stands comprehensively rejected and dismissed.

6. The order dated 11.09.2023 is thoroughly unsustainable and deserves to be quashed and set aside and is accordingly, quashed and set aside. Resultantly, the Application filed below Exhibit-14 stands allowed and order dated 28.11.2022 is quashed and set aside permitting the Defendant to file its Written Statement which shall be filed by the Society within a period of four weeks from today. In case the Society requires further time to file its written statement, Society shall apply to the learned Trial Court for seeking more time for filing the Written Statement and the trial Court shall consider the same.

7. In view of the above, Writ Petition stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]