

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

CIVIL WRIT PETITION NO. 16394 OF 2024

**Shivkumar (Sunny) s/o Omprakash
Talreja**

Age about 33 years, Occ. - Service
Residing at – Flat No. 201, Mohan Heights
Queen's gate, Wayle Nagar,
Khadakpada, Kalyan (W) – 421301
Dist. Thane

...Petitioner

vs.

1. Keerti w/o Shivkuar Talreja Alias

Ms. Priyanka D/o Manohar
Harchwani

Age about 32 years, Occ. - Housewife

2. Saachi d/o Shivkumar Talreja

Minor, Aged : about 8 years,

3. Vaani d/o Shivkumar Talreja

Minor Aged 5 years,
all Residing address – Sai Palace, 603,
Behind Shanti Sagar Hotel,
Kurla Camp Road,
Ulhasnagar – 421 004,
Dist. : Thane

At present Residing at :
Flat No. 505, Raj Regalia Glitter,
Opp. New Water Tank, Pale Village
Ambernath (East) – 421 501.

...Respondents

Adv. Sherookanuga a/w Adv. Chandrashekhar Yadav, Adv.	Advocate for the Petitioner
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Rasik Raut	
Adv. Arjun Jeswani	Advocate for the Respondent

CORAM : S. M. MODAK, J.

DATE : 17th DECEMBER 2024**ORAL JUDGMENT :-**

1. Heard learned Advocate for the Petitioner-Defendant and learned Advocate for the Respondents-Plaintiffs.
2. The trial Court has refused to set aside the order “*proceeding in absence of the Petitioner-Defendant*”. The prayer for setting aside *ex-parte* order came to be rejected by the trial Court as per order dated 20.09.2024 passed by the Court of Civil Judge Senior Division, Kalyan. The Petitioner-Defendant has remained absent in suit instituted by the Respondent-wife as per provisions of the Hindu Adoption and Maintenance Act.
3. There are two rival claims about non-appearance. According to the Respondent-wife, the Petitioner was served properly but deliberately, he has remained absent. There is an emphasis on the conduct of the Petitioner in putting appearance only when the

concerned Court was about to pass certain interim order.

4. My attention is invited to roznama of Criminal Misc. Application No. 67 of 2021. On 15.12.2021, the Respondent-wife has filed an affidavit of assets and liabilities. There was appearance shown in the roznama. It is of two advocates. Copy of the assets and liability is on page no. 98. The relevant page number is 99. At serial No. 21 of that affidavit there are particulars of other pending litigations.

5. There were in all three proceedings:-

- (a) Under the Protection of Women from Domestic Violence Act.
- (b) Criminal Misc. application.
- (c) Special Civil Suit No. 231 of 2021 (this is suit in which the order challenged before this Court is passed).

The submission is “*even otherwise the Petitioner is having knowledge about filing of the suit*”.

6. The contention is raised that “*suit summons is not served on the Petitioner*”. The trial Court in para no. 6 of the order observed “*defendant has not disputed reports at exh. 7 and 8 and signature*”. This observation is factually incorrect. The reason is in the application for setting aside *ex-parte* order, the Petitioner has pleaded in fact at no

point of time, summons was served on the Defendants and signature appearing on summons is not of the Defendants. So he has made necessary averments. Still the Court has to ascertain whether summons is properly served or not.

7. My attention is invited to the summons on page no. 90 and report of bailiff on page no. 91. The report mentions that summons is served on the Plaintiff on 31.03.2022 and attempt is made on behalf of the Petitioner to point out certain lacunae in the report. It is in respect of absence of any person at the time of service, to identify the Petitioner-Defendant. **This plea was not raised in the application filed before the trial Court.**

8. I am not impressed by this contention. If bailiff has offered the summons and if it is offered to wrong person, then he could have refused. There is notice to show cause on page no. 92 having some signature. Defendant is disputing his signature. Merely denial is not sufficient. This contention has to be substantiated by other materials. **For these reasons report of the serving officer is to be believed.**

9. From this affidavit and roznama,, it can certainly be said that the Petitioner-Defendant is having knowledge of filing of the Special Civil

suit.

10. Learned Advocate for the Petitioner relied upon the provision of Order IX Rule 7 of the Civil Procedure Code. According to him, such prayer can be allowed subject to cost. He tried to differentiate in between an order to proceed with the suit *ex-parte* and passing of the *ex-parte* decree. He is right, but Order IX Rule 7 of the Civil Procedure Code also expects the Defendant to show some **good cause** for his previous non-appearance.

11. Learned Advocate for the Petitioner also relied upon the observations made by this Court in case of ***M/s Esquire Polymers Limited Vs. Shri Vitthal Maruti Sakhare and Ors.*** in Writ Petition No. 13115 of 2024, dated 14.10.2024. Those observations are on the basis of facts of that case.

12. It is true the trial Court has passed an interim order to pay maintenance of Rs. 1 Lakh on 04/08/2023 and the Petitioner is in arrears of lakhs of rupees. The Petitioner has challenged this order by way of an appeal, and it is pending.

13. So off let the Petitioner has come forward and he wants to participate in the proceedings. It is true that the suit is at pre-trial stage.

But law requires that parties needs to be given an opportunity to plead and prove their case.

14. So this Court is inclined to set aside the ex-parte order. However considering the conduct of the petitioner, it will be subject to cost of Rs. 25,000/-. Hence the following order is passed:-

ORDER

- (i) The order dated 20/09/2024 passed by the Court of Civil Judge Senior Division, Kalyan is set aside subject to payment of cost of Rs. 25,000/-.
- (ii) Amount be deposited within two weeks before the trial Court after uploading the order.
- (iii) The trial Court to disburse the amount of cost to the Respondent-Plaintiff subject to that the Petitioner is allowed to file written statement.

15. Writ Petition is disposed of.

[S. M. MODAK, J.]