

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

**CIVIL REVISION APPLICATION NO.251 OF 2024
WITH
INTERIM APPLICATION NO.7791 OF 2024
IN
CIVIL REVISION APPLICATION NO.251 OF 2024**

Pushpa Chandrakant Sahamate
V/S

....Applicant

Raju Jamandas Rana

....Respondent

Mr. Ashutosh R. Kaushik i/b M/s. Kaushik & Co. *for the Applicant.*
Mr. Ankit R. Tripathi *for Respondent.*

CORAM: SANDEEP V. MARNE, J.
DATE : 18 JUNE 2024.

P.C.:

1 The challenge in the present Revision Application is to the order dated 13 December 2019 passed by the Small Causes Court, Mumbai rejecting application for condonation of delay which was filed by the Applicant in MARJI Application for setting aside ex-parte decree dated 21 March 2016 in LE Suit No.19/22 of 2011. The order of the Small Causes Court has been confirmed by the Appellate Bench of the Small Causes Court vide judgment and order dated 26 February 2024 by dismissing Misc. Appeal No.21 of 2020.

2 I have heard Mr. Kaushik, the learned counsel appearing for the Applicant and Mr. Tripathi, the learned counsel appearing for the Respondent.

3 After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the ex-parte decree has been passed on 21 March 2016. Since the decree was ex-parte obviously Applicant/Defendant did not have any knowledge about the same. It appears that Defendant's Advocate had withdrawn appearance from the suit and it is alleged that the said Advocate had addressed a notice of withdrawal of appearance to the Defendant on 1 September 2015. The issue about receipt of such notice by the Defendant is under dispute. According to Mr. Tripathi, the Applicant/Defendant was served with notice of execution proceedings on 27 October 2016 and on that day at least she must have noticed ex-parte decree of the suit. However it appears that Applicant was initially advised to file Application at Exhibit-8 for setting aside ex-parte decree, which according to the Applicant was not in proper format. The same was accordingly disposed of/withdrawn and simultaneously the Applicant filed MARJI Application in proper format for setting aside the ex-parte decree on 11 May 2017. Thus during the period from 14 December 2016 to 11 May 2017 improperly filed application seeking setting aside of ex-parte decree was pending at the behest of the Applicant. It therefore cannot be stated that the Applicant was altogether negligent in respect of her rights. Once 14 December 2016 is accepted as the date on which the Applicant started taking steps in the matter, the delay gets reduced from 27 October 2016 to 14 December 2016. In my view this delay after acquisition of knowledge of ex-parte decree does not appear to be unduly long. Immediately after noticing ex-parte decree on 27 October 2016, Applicant did file an application as advised by her Advocate on 14 December 2016. The Small Causes Court has failed to take into consideration this vital aspect and has unnecessarily gone into the issue of

qualifications of the concerned Medical Practitioner to issue the Medical Certificate. The Small Causes Court has not properly appreciated the circumstances of the present case and has erroneously observed that the second application for setting aside ex-parte decree was not maintainable after disposal/withdrawal of application at Exhibit-8.

4 The Appellate Bench of the Small Causes Court has failed to cure the error committed by the Small Causes Court. In my view therefore, the impugned orders passed by the Small Causes Court and its Appellate Bench are clearly unsustainable.

5 Civil Revision Application is accordingly succeeds. Orders dated 13 December 2019 passed by the Small Causes Court, Mumbai and 26 February 2024 passed by its Appellate Bench are set aside. The MARJI Application No.42 of 2017 for condonation of delay is allowed. The Small Causes Court shall proceed to decide MARJI Application filed for setting aside an ex-parte decree passed in LE Suit No.19/22 of 2011 on its own merits. Applicant shall pay costs of Rs.10,000/- to the Respondent within two weeks from today.

6 In view of the disposal of the Civil Revision Application, nothing survives in the Interim Application and the same is also disposed of accordingly.

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(SANDEEP V. MARNE, J.)