



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2933 OF 2024

Rekha Sukhdev Shivde And Another
VERSUS
Alka Sahebrao Suryawanshi And Others

Mr. S. S. Kote, Advocate for Petitioners
Mr. A. B. Chormal, Advocate for Respondent No. 1

CORAM : R. M. JOSHI, J.
DATE : 07th March, 2025

PER COURT :-

1. This petition takes exception to the order passed below Exhibits 40 and 44 in Special Civil Suit No. 29/2021.
2. Respondents No.1/Original plaintiff filed suit bearing Special Civil Suit No. 29/2021 for declaring sale deed in question not binding and also relief of injunction. In the said suit, summons was served upon the defendants/petitioners herein on 29.09.2021. Defendants however failed to appear hence suit proceeded ex-parte. After about 18 months, defendants filed Application Exhibit 40 for setting aside the said order and permitting defendants to contest the suit. It is stated in the said application that at the time when the summons served, family members of the defendants was suffering from COVID-19 disease. On this ground, ex-parte order is sought to be set aside. The Trial Court by order dated

19.06.2023, rejected the said application. Petitioners/defendants filed application Exhibit 44 for review of the said order which also came to be rejected on 18.01.2024.

3. Learned counsel for the petitioners submits that the defendants are bonafide purchasers of the suit property and since declaration is sought with regard to the sale deed executed in their favour, this is a fit case wherein defendants are required to be given an opportunity to defend the suit. It is his submission that there was sufficient reason provided for making application belatedly and considering the COVID-19 pandemic situation, Trial Court ought to have allowed the said application.

4. Learned counsel for the respondents/original plaintiffs opposed the application by pointing out the conduct of defendants. It is his submission that application is rightly rejected as such no interference is required therein.

5. There cannot be any dispute made with regard to the fact that the lis between the parties needs to be decided on merit rather than its dismissal on technicality. Here, in this case, no doubt defendants were served summons on 29.09.2021 but failed to appear before the Trial Court. Defendants however have provided reasons for their non

appearance. It is specifically pleaded in the application apart from their own ill health, there is specific mentioned of their nephew having died during the relevant period. There is documentary evidence placed on record to indicate so. Thus, not only reasons are provided by petitioner for the non appearance but substantiated with evidence. More over, having regard to the situation of COVID 19 pandemic as it then prevailed the Trial Court ought to have taken sympathetic view. In such circumstances, application Exhibit 40 deserves to be allowed by imposing reasonable cost.

6. Having regard to the facts of the case, petition stands allowed with imposing cost of Rs. 15,000/- (Rs. Fifteen thousands only). Payment of cost to the contesting respondent/plaintiff is condition precedent for allowing Exhibit 40 and permitting written statement to be taken on record.

7. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

bsj