

CNR NO. : MHSCA2-003087-2018

IN THE COURT OF SMALL CAUSES MUMBAI

ORDER BELOW EXHIBIT 11

IN

MARJI APPLICATION NO.358 OF 2018

IN

R.A.D. SUIT NO.1339 OF 2006

Deshbhushan Co-operative Housing Society Ltd. ... Applicant

Versus

Shri. Jaswant Devji Patel ... Respondent

Advocate for the applicant : B. S. Mehta

Advocate for Respondent : S. M. Shaikh

Coram : Revati M. Kante
Judge, C.R. No.13
Date : 22.11.2021

ORDER :

Respondent has taken out present application to set aside exparte order passed against him on 12.08.2021. It is his contention that notice was published in English news paper which was unreadable by the respondent and hence, notice was not duly served on him. He has good case on merits and if order is not set aside, he will suffer an irreparable loss.

2. Applicant has filed its reply at Exhibit 12 and mentioned that application is filed beyond limitation period. No reply is annexed with the application. The application is filed with malafide intention to delay the matter and application is liable to be rejected.

3. Perused the application and say thereon. Heard both sides. The exparte order has been passed against the respondent on 12.08.2021. Present application has been filed on 25.10.2021. The applicant has filed main Marji Application for condonation of 4422 days delay caused to it in filing interlocutory application. The applicant is going to challenge consent decree dated 14.08.2006. The applicant is original defendant and respondent is original plaintiff in the suit in which consent decree was passed. Considering the period of delay and reliefs sought by applicant in main Marji Application, reply of respondent will be helpful and necessary to decide main Marji application. No prejudice will cause to the applicant, if application is allowed. Moreover, the application can be decided on merits. Considering all above discussions and in the interest of justice, application deserve to be allowed. As respondent has taken out present application on next to next date of the case, no order as to costs. Hence, the following order.

:: ORDER ::

1. Application below Exhibit 11 is allowed.
2. Exparte order passed against respondent dated 12.08.2021 is hereby set aside.
3. No order as to costs.

Mumbai
Date : 22.11.2021

(Revati M. Kante)
Judge, C.R.No.13