



CNR NO.MHSCA-30007532022

**IN THE COURT OF SMALL CAUSES AT MUMBAI
(BANDRA BRANCH)**

**ORDER BELOW EXHIBIT NO.1
IN
MARJI NO.70 OF 2022
IN
R.A.E. SUIT NO.99/181 OF 2009**

Rajpal Singh Tomar

An adult, Aged 77
Occupation - Retired
Residing at Room No.05,
Satyanath Dubey Chawl,
Jai Ambe Ma Chowk,
Irla Road, Vile Parle (West),
Mumbai - 400 056.

. . Applicant.
(Org. Defendant)

Versus

1. Jaiprakash Satyanath Dubey

An adult, Indian Inhabitant,
Aged 45 years, Occupation - Business

2. Dilipkumar Satyanath Dubey

An adult, Indian Inhabitant,
Aged 43 years, Occupation - Business

Both of them are residing at
Dubey House, Jai Ambe Ma Chowk,

Irla Road, Vile Parle (West),
Mumbai - 400 056.

. . Respondents.
(Org. Plaintiffs)

V. B. Pawar : Advocate for Applicant.
Rahul Tripathi : Advocate for Respondents.

Coram : A.S. Pandagle, Judge
C.R.No.32
Date : 27/7/2023.

ORAL ORDER :

1. This Marji Application is filed by the applicant i.e. original defendant for condonation of delay in making the application for setting aside exparte decree.

2. By filing this application it is contended that the respondents i.e. original plaintiffs have filed suit against the present applicant i.e. original defendant in respect of the suit premises for recovery of possession. In the said suit, he has filed his written statement. He was very regular in attending the suit i.e. RAE Suit No.99/181 of 2009, the plaintiffs i.e. present respondents were not regular in attending the above matter. During the pendency of the said suit, one Mrs. Usha Mishra claiming to be the co-owner of the suit premises taken out an application for joining her as party defendant in the said suit which was allowed, thereafter the above matter was adjourned till 13/1/2017 for compliance of the order, from 30/3/2017 the above matter was adjourned for cross examination of P.W.2 till 6/10/2017 as neither the plaintiff nor the said witness was present and therefore, the cross examination of P.W.2 was closed and the matter was adjourned for further witness of the plaintiff. On all adjourned date he was present before the Court. On 24/11/2017 the evidence of the plaintiff was closed and the matter was adjourned for defendant's evidence. The above matter was adjourned for cross of P.W.1 from 10/1/2019 to 22/11/2019, the plaintiffs and their advocate were absent. On 13/12/2019 P.W.1 was present, but the advocate of the present applicant could not attend the matter and cross examine P.W.1 though the applicant was

present, on that day Court was pleased to pass no cross order and the matter was adjourned for filing evidence of defendant i.e. present applicant. On 14/2/2020 and 13/3/2020 the matter was adjourned for filing closing pursis by the plaintiff and for filing defendant's evidence i.e. the evidence of present applicant.

3. It is further contended that due to pandemic the Court was not functioning from 20/3/2020. From 27/3/2020 till 20/9/2021 the above matter was adjourned for filing closing pursis by the plaintiffs. On 20/9/2021 the plaintiffs i.e. present respondents have filed closing pursis at Exh.51. From August 2021 present applicant could not attend the above matter because of his continuous sickness, he tried to contact his advocate, but the mobile of his advocate was coming engaged. Thereafter on inquiry, he came to know that his advocate has gone to stay with his son who is in Poland. Therefore, in the month of May 2022 the present applicant contacted advocate Mr. Vasant Bhanage to know the progress of above matter. After inquiry advocate Mr. Vasant Bhanage told him that the above matter is disposed off by judgment passed by the Court on 17/2/2022. Since the applicant and his advocate could not attend the matter from September 2021 to the date of decree on 17/2/2022, this Court was pleased to pass judgment in the above matter. During the period from September 2021 till May 2022 he was under medical treatment and was also hospitalized in the Apollo Hospital. Thereafter till this date he is under medical treatment from Apollo Hospital, for that reason, his advocate could not conduct the cross examination and file his affidavit of evidence. The decree passed in the above matter is an exparte and therefore, he is making this application for setting aside exparte decree passed by this Court

in the above matter on 17/2/2022. It is contended by him that he has very good case on merit. From February 2022 to May 2022 he could not take further steps in the matter due to his continuous medical treatment. Thereafter made application for certified copy of judgment on 6/6/2022. Certified copy was delivered to him on 8/6/2022. He also applied for certified copy of roznama on 10/6/2022 and same was issued to him on 17/6/2022. There is delay in filing the application for setting aside exparte decree passed by this Court on 17/2/2022. Therefore, it is necessary in the interest of justice, delay caused in making the application may be condoned. If the delay is not condone, irreparable harm and loss will be caused to him which cannot be compensated in terms of money, therefore, prays for condonation of 82 days delay in filing application for setting aside exparte decree dated 17/2/2022.

4. On the other hand, after service of summons/notice, respondents caused their appearance and filed affidavit in reply below Exh.8. By filing reply respondents denied all the averments of the application of the applicant and contended that application is not maintainable and bad-in-law. The present application under Order 9 Rule 13 of Code of Civil Procedure, 1908, for setting aside exparte decree is not maintainable considering the prayers. The present application has taken out by the applicant just to harass the respondents i.e. original plaintiffs. The suit is of year 2009 and it has been delayed on any other ground just to prolong the litigation. The applicant suppress the appeal filed by him vide Appeal No.108 of 2017 and the order dated 2/12/2021 dismissing his appeal. It is further contended that the applicant has other remedy instead of filing present application for setting aside the exparte decree. That

the applicant is aware that by filing the present application, the applicant will again delay the proceeding and the plaintiff will not get the fruits of the decree. The delay is not properly explained, the balance of convenience is not lies in favour of the applicant, the applicant is not entitled for any relief, therefore, submitted that present Marji Application may be dismissed with costs.

5. From the pleadings of both the parties, following points arises for my determination and I record my findings thereon for the reasons stated below :

Points :	Findings :
1. Whether there is sufficient cause for condonation of delay in making application for setting aside exparte decree passed on 17/2/2022 ?	. . In the affirmative.
2. What order ?	As per final order.

: REASONS :

AS TO POINT NOS.1 AND 2 :-

6. Heard both sides. Ld. Advocate for the applicant in advance of argument relied upon following cited case laws :

1] **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others [Supreme Court & Full Bench Rent Cases, 1987, page 147]**, wherein it is held by the Hon'ble Apex Court while considering the application for condonation of delay, the approach of the Court should be justice oriented while considering question of sufficient cause for delay.

2] Raj Kishore Pandey Vs. State of Uttar Pradesh and others [(2009) 2 Supreme Court Cases 692], wherein it is held by the Hon'ble Apex Court while considering the application for condonation of delay discretion has to be exercised on sound principles and not on mere technicalities. A case as far as possible should be decided on merits and the party should not be deprived to get the case examined on merits.

3] N. Balakrishnan Vs. M. Krishnamurthy [(1998) 7 Supreme Court Cases 123], wherein it is held by the Hon'ble Apex Court that words 'sufficient cause' should be construed liberally.

7. After hearing both sides, gone through the contents of the Marji Application and reply filed thereon, also gone through the record of the proceedings, it is submitted on behalf of the applicant that due to pandemic the Court was not functioning from 20/3/2020. From 27/3/2020 till 20/9/2021 RAE Suit No.99/181 of 2009 was adjourned for filing closing pursis by the plaintiffs, on 20/9/2021 the plaintiffs have filed closing pursis at Exh.51, from August 2021 he could not attend the above matter because of his continuous sickness, he tried to contact his advocate but his advocate has gone to stay with his son at Poland. Later on in the month of May 2022 he contacted advocate Mr. Vasant Bhanage, then he came to know on 17/2/2022 judgment and decree passed in the above matter. From September 2021 to May 2022 he was under medical treatment and was also hospitalized in Apollo Hospital. Later on he filed an application for obtaining certified copy on 6/6/2022 and 10/6/2022, certified copy delivered and issued to him on 8/6/2022 and 17/6/2022. To show the fact that from September 2021 till May 2022 he was under medical treatment and was also hospitalized in

Apollo Hospital, he placed on record list of documents Exh.3. On perusal of list of documents Exh.3 there is Exh.A copy of medical reports Serial No.2 to 52 and for showing his absence from the Court placed on record Exh.B roznama Serial No.53 to 81. From perusal of the documents filed alongwith list of documents Exh.3 it appears that there is justified and sufficient cause for condonation of delay in making this application for setting aside exparte decree passed in RAE Suit No.99/181 of 2009. If the present application is allowed subject to costs, it would not cause prejudice to the present respondents. Hence, I answer point No.1 in the affirmative and in answer to point No.2, I pass the following order.

ORDER

1. Marji Application is partly allowed, subject to costs of Rs.3,000/- (Rs.Three Thousand only) to be paid to the respondents/original plaintiffs or to deposit in the Court within one month.
2. The delay of 82 days in filing application for setting aside exparte decree passed on 17/2/2022 is hereby condoned, upon payment of above costs amount.
3. Marji Application under Order 9 Rule 13 of the Code of Civil Procedure, 1908, for setting aside exparte decree passed in RAE Suit No.99/181 of 2009 on 17/2/2022, be taken on record and be registered accordingly, after payment of costs amount.

Bandra - Mumbai.
Date : 27/7/2023.

(A.S. Pandagle)
Judge, C. R. No.32.

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